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Vol. I

**TRANSCRIPT OF RECORD**

(Pages 1 to 554)

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**Supreme Court of the United States**

**OCTOBER TERM, 1963**

**No. 188**

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**UNITED CONSTRUCTION WORKERS, AFFILIATED  
WITH UNITED MINE WORKERS OF AMERICA,  
ET AL, PETITIONERS,**

**vs.**

**LABURNUM CONSTRUCTION CORPORATION**

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**ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF APPEALS OF  
THE COMMONWEALTH OF VIRGINIA**

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**PRINTED FOR THE COURT JULY 12, 1963**

**RECEIVED JANUARY 12, 1964**

(Clerk's Note—See end of Volume I for index to complete record.)

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 3989.**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Monday the 3rd day of March, 1952.

UNITED CONSTRUCTION WORKERS AND OTHERS,  
Plaintiffs in Error,

*against*

LABURNUM CONSTRUCTION CORPORATION,  
Defendant in Error,

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UPON A WRIT OF ERROR AND *SUPERSEDEAS* TO A JUDGMENT RENDERED BY THE CIRCUIT COURT OF THE CITY OF RICHMOND ON THE 5TH DAY OF JULY, 1951.

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This day came the defendant in error, by counsel, and moved the court to dismiss the writ of error and *supersedeas* granted in this case for the reason that the assignments of error are insufficient to give the court jurisdiction; and came also the defendant in error, by counsel, and obtained leave to file his answer thereto. Upon consideration whereof it is ordered that defendant in error's answer and brief in support thereof be filed on or before the 25th day of March, and that the motion be set for oral argument at the April session of this court.



**RECORD**

Virginia:

In the Circuit Court of the City of Richmond.

Laburnum Construction Corporation, a corporation, Com-  
plainant

v.

United Construction Workers Affiliated with United Mine  
Workers of America; District 50 United Mine Workers of  
America, and United Mine Workers of America, Defendants

Nov. 16, 1949. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk

By E. M. EDWARDS, D. C.

**NOTICE OF MOTION FOR JUDGMENT.**

To—United Construction Workers affiliated with United Mine  
Workers of America; District 50 United Mine Workers  
of America and United Mine Workers of America.

TAKE NOTICE that Laburnum Construction Corporation, a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its principal office in the City of Richmond, Virginia, on the 22nd day of December, 1949, at 10 o'clock a. m. or soon thereafter as its counsel may be heard, will move the Circuit Court of the City of Richmond, Virginia, for judgment against you and each of you jointly and severally in the sum of Five Hundred Thousand Dollars (\$500,000.00) for this to-wit:

That Laburnum Construction Corporation, hereinafter sometimes called "Plaintiff", under and by virtue of a contract or construction agreement dated October 28, 1948, between the Plaintiff and Pond Creek Pocahontas Company of Huntington, West Virginia, was on and prior to the 26th day of July, 1949, and until on or about August 4, 1949, engaged in the construction of a coal preparation plant for said Pond Creek Pocahontas Company at that Company's Number One Coal Mine in Breathitt County, Kentucky; and further that

by virtue of a contract dated December 15, 1948,  
page 2 } between the Plaintiff and Spring Fork Development  
Company, Plaintiff was engaged in the construction  
of twenty-five dwellings in Breathitt County, Kentucky, near  
the aforesaid Coal Mine. Plaintiff was continuously engaged  
in and about said work from on or about the respective dates  
of said contracts until August 4, 1949, and had nearly com-  
pleted each of said projects in accord with the terms of the  
aforesaid contracts. Prior to undertaking said construction  
projects, Plaintiff had entered into a contract with Richmond  
Building and Construction Trades Council, a copy of which  
is attached to and made a part of this Notice of Motion for  
Judgment and is marked Exhibit "A", under the terms of  
which last mentioned contract Plaintiff was obligated to em-  
ploy workmen through the said Richmond Building and Con-  
struction Trades Council and its affiliates, as more particu-  
larly set forth in said contract. Pursuant to the terms of said  
contract (Exhibit "A"), the Plaintiff entered into an ar-  
rangement with Paintsville, Kentucky, Carpenters Local  
Union No. 646, American Federation of Labor recognizing  
that Union as the bargaining agent for workmen of Plaintiff  
on said construction projects.

On or about July 14, 1949, one William O. Hart of Pike-  
ville, Kentucky, communicated by telephone with the Plain-  
tiff and said Hart stated that he was the Field Representa-  
tive and an officer of United Construction Workers Affiliated  
With United Mine Workers of America (hereinafter some-  
times called United Construction Workers) and that he  
worked under a Mr. David Hunter, Regional Director of and  
an officer of District 50 United Mine Workers of America,  
(District 50 United Mine Workers of America will herein-  
after sometimes be called District 50) in charge of Region 58  
of said District 50, and that he was calling about the work  
which the Plaintiff was doing for Pond Creek Poca-  
page 3 } hontas Company in Breathitt County, Kentucky.

The said Hart further stated that he understood  
that Pond Creek Pocahontas Company intended to award  
to the Plaintiff considerable additional work in Breathitt  
County, Kentucky, which would include among other things  
approximately 500 dwellings, stores and other buildings.  
Said Hart then stated that the territory in which this work  
was being performed was the territory of the United Con-  
struction Workers and that he intended "to take over" all of  
the Plaintiff's work for the Pond Creek Pocahontas Company  
in Breathitt County, Kentucky. The said Hart then stated  
that the United Construction Workers had closed down a job  
of Beckett Construction Company at Wheelwright, Kentucky,

and unless the Plaintiff agreed to recognize immediately United Construction Workers as the sole bargaining agent for the employees of Plaintiff on said projects in Breathitt County, Kentucky, that he, William O. Hart as Field Representative and an officer of United Construction Workers and District 50, would close down the work of the Plaintiff in Breathitt County, Kentucky. The Plaintiff informed the said Hart that it could not comply with his demands since Plaintiff was already under contract for these same employees with the Richmond Building and Construction Trades Council and the Paintsville Carpenters Local No. 646, American Federation of Labor, and other labor unions affiliated with American Federation of Labor.

On or about July 25, 1949, the superintendent in charge of the works of Plaintiff in Breathitt County, Kentucky, learned that the said William O. Hart had arranged to bring a large group of men to the job site of Plaintiff in Breathitt County, Kentucky, at about noon on the following day, July 26, 1949, for the purpose of forcibly stopping the work of the Plaintiff on said job, and the said superintendent was also informed that the said group of men with said Hart would be armed.

Pursuant to said threat, the said William O. Hart, page 4 } Field Representative of and an officer and agent of the said United Construction Workers while acting within his authority as such representative, officer and agent, as hereinafter set forth, arrived at the said job in Breathitt County, Kentucky, at about noon on July 26, 1949, with a mob of men variously estimated at between 75 and 100 men, which mob was headed by the said William O. Hart acting in his capacity as Field Representative and an officer of United Construction Workers and District 50. Upon inquiring of the said Hart as to his authority to interfere with and prevent Plaintiff from continuing its work the said Hart then replied that he was acting under orders of Tom (Thomas) Rainey and that he was carrying out Rainey's orders. The said Tom (Thomas) Rainey is a member of United Mine Workers of America and is one of the members of the International Executive Board of said United Mine Workers of America and is authorized to give orders for and on behalf of United Mine Workers of America, to said District 50 and United Construction Workers and the said Hart. The said mob headed by said Hart went to the schoolhouse being constructed by Plaintiff in Breathitt County, Kentucky, being Job No. 340 of the Plaintiff, and then went to the coal tipple in Breathitt County, Kentucky, being part of Job No. 322 of Plaintiff, and immediately began haranguing workmen employed by Plaintiff with threats and abuses and then demanded that these men

immediately become members of United Construction Workers. The said Hart further in violent language said to these men that they would not be permitted to continue their work unless they became members of the United Construction Workers. Said Hart and the mob of men headed by him were informed that workmen on said job were members of Local Unions affiliated with the American Federation of Labor or had made application to become members of such local unions. The employees on the job promptly refused to become members of said United Construction Workers. Thereupon, the said mob headed by the said William O. Hart, Field Representative and an officer as aforesaid of United Construction Workers and District 50, swarmed around most of the laborers on said job and demanded that these laborers sign application blanks to become members of United Construction Workers. The Plaintiff is not informed whether any of its said employees signed application blanks, but is of opinion and believes that some did so under duress since they feared they would be injured or killed by said mob if they refused to sign such cards. A number of the mob headed by the said William O. Hart had been drinking and were intoxicated or seemingly intoxicated, and many of said mob headed by the said Hart were carrying pistols or guns according to the information and belief of the employees of the Plaintiff. Some of these employees saw the outline of pistol handles or bullet cylinders concealed under the shirts or in the pockets of some of the members of said mob, and after the said mob left the said schoolhouse, pistol shots were heard while this mob was approaching the said coal tippie. The said Hart then with said mob, entered the toolhouse of the Plaintiff in Breathitt County, Kentucky, and there violently addressed a group of Plaintiff's employees and said Hart then again emphatically and violently affirmed that he and his mob had come to the job for the purpose of stopping the Plaintiff's men from working unless they joined United Construction Workers. The said Hart further stated that excepting some few laborers, Plaintiff's employees had refused to join United Construction Workers and that the employees who had not joined his (Harts) Union would not be permitted to work. The said Hart stated that he and his mob were establishing a picket line and that they were prepared to use all force necessary to hold the picket line and prevent the employees of Plaintiff from working. The said Hart further stated that the United Construction Workers intended to see that the Plaintiff's men did not work and that if anyone did not believe this, he, the said Hart would bring to the job 200 tough men from Beaver Creek,

Kentucky, and that these men would come "rough" and that they would kick the Plaintiff's men off the job. Some of the Plaintiff's employees resented the interference of said Hart and his mob and so stated in vigorous terms and thereupon some of the mob of followers of the said William O. Hart reached into their shirts or pockets as though they were reaching for guns, but due to the cool headedness of one of the men present, the Plaintiff's workmen were advised not to run the risk of bloodshed and to submit to be driven from their work by said Hart and his mob.

Thereupon, the said workmen employed by the Plaintiff in Breathitt County, Kentucky, were driven from their work by said Hart and his mob by use of threats of bodily harm to them and their families, and thus all work of the Plaintiff under the aforesaid contracts was stopped on July 26, 1949.

On or about July 27, 1949, many of the employees of the Plaintiff returned to their said work, but upon arriving at the aforesaid tippie, found two men who apparently were "spotters" for United Construction Workers and also found one H. G. Robinson who represented himself to be a Field Representative and an officer of United Construction Workers. A number of the employees of the Plaintiff were gathered in the carpenters toolhouse near said tippie and said employees and their steward refused to return to work for the reason that the men had been informed that in the event they undertook to work, more than 100 United Construction Workers would come upon the job and force them to stop, and that possibly something might happen to them if they returned to work on the tippie. It was also rumored that certain of the mob were hiding in the hills with rifles and would  
page 7 } shoot any of the men who might return to work.

Shortly thereafter, all of the employees of the Plaintiff left the said work because of said threats and rumors and have not since returned to their work. The Plaintiff in the meantime, had appealed to a Kentucky State Police officer for assistance, but had received no adequate assistance to maintain law and order upon the said works. The Kentucky State Police officer knew of the disturbance but stated that he had orders not to take part in any such disturbance. The said state policeman stated that he was convinced there was real danger to the men should they return to their work, and further stated that "I have not only seen them shot that way, but have picked them up after they were shot". On or about August 1, 1949, a meeting was held of United Construction Workers at a place known as "Tiptop" at or near Carver, Kentucky, which meeting was attended by approximately 250 persons. The said meeting was conducted by the said Wil-

liam O. Hart and at which meeting there was a further discussion of the construction work of the Plaintiff in Breathitt County, Kentucky, and the said Mr. William O. Hart at that meeting again insisted upon preventing the Plaintiff from proceeding with its work under said contracts in Breathitt County, Kentucky. Thereupon, arrangements were made by the said Hart to have certain people who were members of United Construction Workers posted at various parts of the said works of Plaintiff and the said Hart thereupon called upon the assembled crowd for volunteers to go to the Plaintiff's job site to serve as pickets or spies for United Construction Workers. The Plaintiff was constantly making every effort to induce his workmen to return to work but was unable to do so because of the threats which theretofore had been made by the said Hart and members of the United Construction Workers.

page 8 } On or about August 1, 1949, the Plaintiff did induce some of its workmen to return to the location of the job and new badges were issued to them and such other men as the Plaintiff was able to hire to go to work. Before starting actual work these men also were intimidated by the said Hart and his mob so that none of these men actually went to work because they were fearful of consequences which might be visited upon them by the said United Construction Workers if they did so. While the said men were still at the job location, the said William O. Hart came to the works and made another very emphatic speech and statement that United Construction Workers would not permit the work to go on so far as common laborers were concerned unless the Company signed a contract with the United Construction Workers. Said Hart was informed by Plaintiff that the work could go along without any laborers since the carpenters on the job would be willing to do the work which normally the laborers should do. Thereupon the said Hart stated that he would not permit the said carpenters to do any such work. The said Hart then indicated he would take whatever measures might be necessary to see to it that the men did not work. He then threatened the men with bodily harm if they attempted to go to work. The Plaintiff then undertook to communicate and did communicate with Mr. Thomas Davis, an Assistant Chairman of said District 50, and the coordinator of various Regions of District 50 including among other locations, Breathitt County, Kentucky. Mr. Davis has an office in Knoxville, Tennessee, but was not there. The Plaintiff located him in Kingsport, Tennessee. Mr. Davis was thereupon informed of the developments at the Plaintiff's project in Breathitt County, Kentucky, and of the agreement between

the Plaintiff and American Federation of Labor Unions and of the agreement of Plaintiff with Richmond Building and Construction Trades Council. Mr. Davis thereupon page 9 } stated, "We do not recognize the American Federation of Labor any more than they recognize us".

Mr. Davis said he was very sympathetic with people in Plaintiff's position, but that it was caught between two big unions and he would not, although urgently requested so to do by Plaintiff, direct the said Mr. Hunter or the said Hart not to disturb or interfere with the employees of the Plaintiff. The said Davis refused to come to the location of said work because of other appointments which he claimed to have. The Plaintiff, thereupon, arranged a meeting for the succeeding day, August 2, 1949, at 10 o'clock a. m. which meeting the said Hart agreed to attend upon condition that the Plaintiff would not attempt to perform any work until said meeting. On the succeeding morning, August 2, 1949, the meeting proposed was held and at said meeting a number of representatives from various Unions affiliated with the American Federation of Labor, were present. The Plaintiff then stated that it felt that the men should be directed to go back to work and it requested and urged them to do so. One of the representatives of the American Federation of Labor asked the question "Do you want to wait until somebody is killed before you do something?" The Plaintiff stated that it did not think anybody would be killed, but all of the representatives of the said Unions agreed that none of the men voluntarily should expose themselves to such a risk, since they believed someone would be killed if work was permitted to go on. The men then refused, because of said threats of said Hart and his mob, to go back to work. While the meeting was in progress, the representatives of the American Federation of Labor refused to meet with the said Hart. Thereupon the said Hart informed the Plaintiff that his position had not changed, that he would insist that the Plaintiff's employees discontinue page 10 } their work and said further that he would if necessary bring 1,000 men to the job to hold his picket line. Because of the threats of the said Hart and the said United Construction Workers, the employees of the Plaintiff refused to return to their work.

Under date of August 4, 1949, Pond Creek Pocahontas Company, by letter, notified the Plaintiff that because of Plaintiff's inability to proceed with said work, its contract therefor was cancelled as of that date. A copy of said letter of cancellation is attached hereto and made a part hereof and marked Exhibit "B". On the same day, Spring Fork Development Company, by letter, notified the Plaintiff that



because of Plaintiff's inability to proceed with the said work, its contract therefor was cancelled. A copy of said letter of cancellation is attached hereto and made a part hereof and marked Exhibit "C".

That United Construction Workers is an unincorporated association composed of numerous members and is commonly called a labor union. That District 50 is an unincorporated association composed of numerous members and is commonly called a labor union. That United Mine Workers of America is an unincorporated association composed of numerous members and is commonly called a labor union. That the constitution of the United Mine Workers of America provides among other things that the organization of United Mine Workers of America shall be international in its scope and that its international union shall be composed of workers eligible for membership in the United Mine Workers of America, and that it may be divided into districts, and sub-districts, but that the United Mine Workers of America shall have supreme legislative and judicial authority over all members and subordinate branches and shall be the ultimate tribunal to which all matters of importance to the welfare of its membership and subordinate branches shall be re-

page 11 } ferred for adjustment, and that between the international conventions the supreme executive and judicial powers of the United Mine Workers of America shall be vested in its Executive Officers and the Executive Board; that all districts, subdistricts and local unions must be chartered by and under the jurisdiction of and subject to the laws of United Mine Workers of America and subject to the rulings of its International Executive Board. Under Article XX of said Constitution of United Mine Workers of America, it provided that District 50 United Mine Workers of America, subject to the jurisdiction and regulations of the said International Executive Board is thereby created and set up under the authority of the United Mine Workers of America. Said District 50 United Mine Workers of America, although organized under and pursuant to the terms of said Constitution of United Mine Workers of America, and thus subordinate to and under the control and direction of said United Mine Workers of America, is nevertheless a separate unincorporated association having members, officers, committees, and property of its own, and has power to adopt by-laws and rules not inconsistent of the Constitution of the United Mine Workers of America. Pursuant to the provisions of said Constitution of United Mine Workers of America, said District 50 was set up under rules adopted by its organizing committee, as a separate unincorporated association, but subordinate and

subsidiary to United Mine Workers of America. Under the terms of its said rules said District 50 has an administrative officer operating under the authority of Article XX of the Constitution of the United Mine Workers of America, (who is sometimes known as its Chairman or Director) who has supervision over the administration of the affairs of said District 50. The said rules further provide for the payment of dues and assessments to said District 50 by its page 12 } members, and provides for a separate treasurer, so that business and affairs of said District 50 are separate and distinct from the affairs of United Mine Workers of America, with the exception that said District 50 is subordinate to and is a subsidiary of United Mine Workers of America and is completely controlled by and must act within the Constitution of the said United Mine Workers of America. The said rules set up for the governing of the said District 50 among other things, provide that the administrative officer of said District 50 shall be authorized to appoint Regional Directors who shall have supervision over local unions within the region assigned to each, and which Regional Directors are required to report to said administrative officer on all matters of policy and organizational activities at the end of each week.

It is further provided by said Constitution of United Mine Workers of America and said rules of said District 50, that subdistricts may be set up by said District 50. Pursuant to the authority therein conferred, said District 50 has caused to be set up a number of subdistricts among which is the United Construction Workers. The rules under which the said United Construction Workers is organized expressly provide that the said organization shall be affiliated with United Mine Workers of America and shall be subject to the Constitution of the said United Mine Workers of America. It is further provided by said rules that the administrative officer (sometimes called Chairman or Director) of United Construction Workers shall be subject to and conform with the Constitution and policy of the United Mine Workers of America. The said United Construction Workers, although organized by and pursuant to the direction and control of District 50, is nevertheless a separate unincorporated association having members, officers, committees and property of its own, and has power to adopt by-laws or rules page 13 } not inconsistent with the Constitution and by-laws of United Mine Workers of America and the rules and by-laws of District 50. Its members are required to pay dues and assessments. A portion of said dues after payment to United Construction Workers is transferred to District 50,

and to United Mine Workers of America. That the said United Construction Workers is a separate unincorporated association but is subordinate to and a subsidiary of District 50 and United Mine Workers of America and is affiliated with and controlled by said District 50 and by United Mine Workers of America.

That the Regional Director of District 50 for the region including Breathitt County, Kentucky, is also a Regional Director of United Construction Workers and the said David Hunter and the said William O. Hart were and are the duly authorized representatives of United Mine Workers of America, of District 50 and of United Construction Workers. The said United Construction Workers is and was at all times hereinbefore mentioned, the agent of United Mine Workers of America and of said District 50, and all of the acts of the said William O. Hart and his mob and the acts of the said United Construction Workers in and about their efforts unlawfully and maliciously to prevent the Plaintiff from continuing its work in Breathitt County, Kentucky, were duly authorized, ratified and confirmed by said United Construction Workers, by said District 50 and by said United Mine Workers of America as their own acts jointly and severally.

United Construction Workers is now doing business within the Commonwealth of Virginia and has one of its principal offices in the Commonwealth of Virginia located in the City of Richmond, Virginia, and an officer thereof is also domiciled and has his office in the said City of Richmond. District

50 is now doing business within the Commonwealth of Virginia and has one of its principal offices in the Commonwealth of Virginia located in the City of Richmond, and an officer thereof is also domiciled and has his office in the City of Richmond, Virginia. That United Mine Workers of America is now doing business within the United States of America and within the Commonwealth of Virginia.

The Plaintiff urged the said William O. Hart, David Hunter and Thomas Davis, all of whom were and are officers and agents of United Construction Workers, of District 50, and of United Mine Workers of America to cease interfering with and preventing the Plaintiff from proceeding in a normal manner with its work, but each of them refused to cease their interference on behalf of said United Construction Workers, District 50 and United Mine Workers of America and each of them maliciously, wilfully and unlawfully continued their said interference with the said work of Plaintiff; all of which said actions were wilful, malicious, illegal and unwarranted and were intended to and did actually greatly damage and in-

jure the Plaintiff's in and about its property and reputation and caused Plaintiff's work in Breathitt County, Kentucky, to be stopped and its said contracts to be cancelled, and further caused Plaintiff to lose other contracts for work which would have resulted in large profits to Plaintiff. The said United Mine Workers of America, said District 50, and the said United Construction Workers each jointly and severally ratified, approved and confirmed and authorized the acts of the said William O. Hart and his mob against the Plaintiff in Breathitt County, Kentucky, for the purpose of wilfully, maliciously and unlawfully attempting to destroy Plaintiff's business, and to prevent Plaintiff from further continuing lawfully to work within the State of Kentucky unless and until Plaintiff submitted to their demands to permit United Construction Workers to become the bargaining agent for Plaintiff's employees.

page 15 } Wherefore, the said Plaintiff will move the said court at the time and place aforesaid for judgment against United Mine Workers of America, United Construction Workers Affiliated With United Mine Workers of America, and District 50 United Mine Workers of America jointly and severally in the sum of \$500,000.00 for damages both actual and punitive.

LABURNUM CONSTRUCTION CORPORATION

By HUNTON, WILLIAMS, ANDERSON,  
GAY AND MOORE,

Counsel

NORMAN C. FLIPPEN

Of Counsel for Plaintiff

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EXHIBIT "A".

THIS AGREEMENT, made this 15th day of April, 1947, between LABURNUM CONSTRUCTION CORPORATION, hereinafter called the "Contractor", of Richmond, Virginia, party of the first part; and RICHMOND BUILDING AND CONSTRUCTION TRADES COUNCIL, hereinafter called the "Council", of Richmond, Virginia, party of the second part:

WITNESSETH:

WHEREAS, the Contractor is engaged in the construction business in the State of Virginia and elsewhere; and,

WHEREAS, the Council is a voluntary association of certain Local Unions, which, through their respective International Organizations, are affiliated with the National Building Trades Department of the American Federation of Labor; and,

WHEREAS, The Contractor and the Council, subject to the terms and conditions hereinafter set out, desire to enter into this agreement for their mutual benefit.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for and in consideration of the premises and the mutual covenants and agreements herein contained, the Contractor and the Council, subject to the terms and conditions hereinafter set out, do hereby agree as follows:

#### ARTICLE I. DEFINITIONS.

1. As used herein, the words "Local Union" shall mean a Local Union now or hereafter associated with the Council.

2. As used herein, the words "Other Local Union" shall mean a Local Union which is affiliated with the National Building Trades Department of the American Federation of Labor, but which is not associated with the Council.

3. As used herein, the words "Jurisdictional  
page 17 } Dispute" shall mean a condition which exists when two or more Local Unions claim the right to perform the same work at the same time in the same place.

#### ARTICLE II. EMPLOYMENT.

1. The Contractor agrees with each Local Union to employ only members of that Local Union when working in the area over which it, the Local Union, has jurisdiction, and when performing work over which it, the Local Union, has jurisdiction. It is understood and agreed, however, that in a case where there is or may be more than one Local Union for a craft, the Contractor, as it may deem fit, may employ the members of any of those Local Unions. It is further understood and agreed that in a case where one or more Local Unions and one or more Other Local Unions have jurisdiction over the same craft or trade in the same or substantially the same area, the Contractor, as it may deem fit, may employ the members of any of those Local Unions or Other Local Unions.

2. Each Local Union agrees with the Contractor to exercise every effort to furnish to the Contractor a sufficient number of qualified workers as and when they may be needed by

the Contractor. It is specifically understood that each Local Union will make every reasonable effort to discharge fully and faithfully this obligation imposed upon it and, to that end, it agrees to keep in close contact with all its members in order that prompt and efficient service may be rendered to the Contractor. If a Local Union should not be able to refer promptly to the Contractor enough members to fill the Contractor's needs, then the Local Union, at its own cost and expense, will contract, by mail, telephone or telegraph, Other Local Unions in the State of Virginia and elsewhere, and also, if deemed advisable, it will contact the International Organization with which it is affiliated, all in an effort page 18 } to recruit enough qualified workers to meet the Contractor's demands.

3. With respect to work which the Contractor may have in an area over which a Local Union does not have jurisdiction, the Contractor agrees to contact the Other Local Union which has jurisdiction over that area, to request that Other Local Union to furnish qualified workers and to give preference to members of that Other Local Union in employing workers.

### ARTICLE III. SUBCONTRACTS.

1. The Council agrees to make every effort to organize all crafts and trades to the end that there shall be in each craft or trade at least three (3) Union Subcontractors having offices and engaging in business in the area or areas over which the Local Unions have jurisdiction. Each Local Union shall make known to the Contractor the names of the Union Subcontractors for its craft or trade, and the Contractor, until notified to the contrary in writing by the Local Union, may regard those Subcontractors as Union Subcontractors and may enter into agreement with them.

2. It shall be the duty and obligation of the Contractor, prior to subletting any portion of its work, to communicate with the Council or with the Local Union having jurisdiction over the trade or craft involved, and to ascertain whether a proposed subcontractor is a Union Subcontractor. If the Contractor shall be advised that a proposed Subcontractor is a Union Subcontractor, then the Contractor may enter into an agreement with that Subcontractor. If the Contractor shall be advised that the proposed subcontractor is not a Union Subcontractor, then the Contractor shall not enter into an agreement with that subcontractor.



#### ARTICLE IV. WAGES, RULES AND REGULATIONS.

1. With respect to wages, the Contractor agrees with each Local Union to pay wages to the members of that Local Union based upon the then prevailing wage rate as the page 19 } same may have been established as the result of collective bargaining.

2. The Contractor further agrees with each Local Union to abide by the rules and regulations of that Local Union.

3. The Council and the Local Unions agree that no change will be made in the wages to be paid and in their respective rules and regulations which will cause increased costs to the Contractor unless the Contractor is first consulted and agrees to the proposed change. This shall not be construed to mean that no changes shall be made without the consent of the Contractor. It is admitted by all parties concerned that from time to time changes will occur. It does mean that no change will be made which will cause the Contractor to sustain increased costs with respect to work then under contract or in progress.

#### ARTICLE V. JURISDICTIONAL DISPUTES.

1. The Council and the Local Unions agree to the following:

(a) The Council shall provide a means for the prompt and speedy temporary settlement of any jurisdictional dispute which may occur among the Local Unions, which temporary settlement shall be final and conclusive until such time as the dispute may be finally settled by the National Building Trades Department of the American Federation of Labor.

(b) The President of the Council shall promptly advise the Contractor in writing about any temporary settlement of a jurisdictional dispute, and shall also advise the Contractor in writing about any final settlement made by the National Building Trades Department of the American Federation of Labor.

(c) The Contractor agrees to abide by any temporary settlement made by the Council until such time as a final settlement shall have been made by the National Building Trades Department of the American Federation of Labor, and further agrees, after a final settlement is made, to abide by same.

2. The Council and the Local Union agree that there will be no stoppage of work or strike because of a jurisdictional dispute unless the Contractor fails to discharge the obligations imposed upon it by subparagraph (c) next above.



## ARTICLE VI. COOPERATION.

1. The Council and the Local Unions agree to cooperate with the Contractor and to promote its business and interests in every way possible, to do nothing that will injure the Contractor, and to urge the members of the Local Unions to put forth their best efforts to accomplish the work in hand as efficiently, expeditiously and economically as possible, all to the end that the Contractor may derive as much profit from its work as may reasonably be expected.

2. The Contractor agrees to cooperate with the Council and the Local Unions and to promote their business and interests in every way possible, and to do nothing which will injure the Council and the Local Unions.

3. It is the declared purpose and intention of the Council and its Local Unions on one hand and also of the Contractor on the other that each shall work for and promote the business and interests of the other.

## ARTICLE VII. DURATION.

1. This agreement shall become effective April 15, 1947, and shall continue in full force and effect until terminated by the written notice provided for in the paragraph next below.

2. Either party to this contract shall have the right to terminate same on April 15, 1949, by giving three months prior written notice to the other. After April 15, page 21 } 1949, either party to this contract shall have the right to terminate this contract on its anniversary date, that is, April 15, by giving three months prior written notice to the other.

3. It is expressly understood and agreed that this contract shall continue in full force and effect without interruption until such time as it may be terminated by the written notice hereinabove provided for, and that the failure of either party to give notice to terminate shall not be construed as a renewal or extension of this contract.

## ARTICLE VIII. RIGHTS AND OBLIGATIONS.

1. It is expressly understood and agreed that this contract shall enure to the benefit of and shall be binding upon (a) the Council and its Local Unions and (b) the Contractor.

## ARTICLE IX. ARBITRATION.

1. Should any question arise as to the rights, duties and obligations of the Council or any of its Local Unions under this contract, or as to the rights, duties and obligations of the Contractor hereunder, then the matter shall be handled in the following manner:

(a) The Contractor and the Council, upon five days written notice given by either to the other, shall each immediately appoint one representative. The two representatives thus appointed shall seek amicably to settle any questions arising under this agreement. If the two representatives agree, their decision shall be final and binding on all parties. If the two representatives shall be unable to agree within 5 days (this time may be extended by mutual agreement), the two sides shall, upon motion of either side, select a disinterested person who shall be known as an umpire, and who, together with the two representatives, shall constitute a Board of Arbitration. The Board shall consider the matter in dispute and render a decision as promptly as possible. The majority decision of this Board shall be final, conclusive, and binding on both parties.

page 22 } (b) The Council, each Local Union and the Contractor jointly and severally agree that there shall be no stoppage of work, strike or look-out pending settlement of a dispute in the manner hereinabove provided.

(c) Any expense incurred jointly through arbitration shall be shared equally by the Contractor and the Council.

IN WITNESS WHEREOF, the parties of the first and second parts have caused their names to be signed hereto by their respective duly authorized officers, all as of the day and year first above mentioned.

LABURNUM CONSTRUCTION CORPORATION

By /s/ A. HAMILTON BRYAN

President

Witnesses:

/s/ WILLIAM J. MOORE, JR.

/s/ FRANCES W. EVANS

As to the Contractor

RICHMOND BUILDING AND CONSTRUCTION TRADES COUNCIL

By /s/ J. F. JOINVILLE

President

By /s/ W. M. ROBERTSON

(Seal)

Secretary

.....  
As to Council

## POND CREEK POCAHONTAS COMPANY

R. E. SALVATI  
PRESIDENTHUNTINGTON  
WEST VIRGINIA

August 4, 1949.

Laburnum Construction Corporation,  
Richmond, Virginia

Attn: Mr. Hamilton Bryan, President.

Gentlemen:

Please refer to Article 6 in our construction agreement with you dated October 28, 1948, covering the construction of a coal preparation plant at our No. 1 Mine in Breathitt County, Kentucky.

About noon on July 26, 1949, we understand that your men were prevented from continuing to work on the tipple by threats and other action of representatives of the United Construction Workers, a branch of District 50 of the United Mine Workers of America. Since that time, no further work has been done on the tipple.

I am sure that you realize that it is necessary for us to complete the construction of the tipple at the earliest practicable date. Therefore, under the provisions of Article 6 above referred to, you are hereby notified that said contract and your employment thereunder is terminated. It will be appreciated if you will remove all your tools and equipment from the site of the work at the earliest practicable date.

Yours very truly,

POND CREEK POCAHONTAS COM-  
PANY,  
By /s/ R. E. SALVATI  
President.

/let

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EXHIBIT "C".

August 4, 1949.

Laburnum Construction Corporation,  
Richmond, Virginia.

Attn: Mr. Hamilton Bryan, President.

Gentlemen:

Please refer to Article 6 in our construction agreement with you dated December 15, 1948, covering the construction of twenty-five dwellings near the No. 1 Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky.

About noon on July 26, 1949, we understand that your men were prevented from continuing to work on the dwellings and a school house by threats and other action of representatives of the United Construction Workers, a branch of District 50 of the United Mine Workers of America. Since that time, no further work has been done on the dwellings and school house.

I am sure that you realize that it is necessary for us to complete the construction of the dwellings and school house at the earliest practicable date. Therefore, under the provisions of Article 6 above referred to, you are hereby notified that said contract and your employment thereunder is terminated. It will be appreciated if you will remove all your tools and equipment from the site of the work at the earliest practicable date.

Yours very truly,

SPRING FORK DEVELOPMENT COM-  
PANY,

By /s/ W. A. OGG

President.

. . . . .

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. . . . .

PLEA OF NOT GUILTY.

The Defendants, United Construction Workers Affiliated  
with United Mine Workers of America, by their attorneys,

come and say that they are not guilty of the premises in this action laid to their charge in manner and form as the plaintiff hath complained.

And of this the said defendants put themselves upon the country.

WILLIAMS, MULLEN & HAZELGROVE  
GUY B. HAZELGROVE, p. d.

Jan. 10, 1950. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

page 60 }

. . . . .

#### PLEA OF NOT GUILTY.

The Defendants, District 50, United Mine Workers of America, by their attorneys, come and say that they are not guilty of the premises in this action laid to their charge in manner and form as the plaintiff hath complained.

And of this the said defendants put themselves upon the country.

WILLIAMS, MULLEN & HAZELGROVE  
GUY B. HAZELGROVE, p. d.

Jan. 10, 1950. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

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. . . . .

#### PLEA OF NOT GUILTY.

The Defendants, United Mine Workers of America, by their attorneys, come and say that they are not guilty of the prem-

ises in this action laid to their charge in manner and form as the plaintiff hath complained.

And of this the said defendants put themselves upon the country.

WILLIAMS, MULLEN & HAZELGROVE  
GUY B. HAZELGROVE, p. d.

Jan. 10, 1950. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

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\* \* \* \* \*

Upon motion of the Plaintiff, it is ordered that the Defendants file herein their grounds of defense within 20 days from the receipt of answers to interrogatories which Defendants shall serve upon Plaintiff on or before June 20, 1950.

HAROLD F. SNEAD

6/8/50.

\* \* \* \* \*

page 63 }

\* \* \* \* \*

#### INTERROGATORIES.

Received & filed Jun. 19, 1950.

Teste:

WILBUR J. GRIGGS, Clerk  
By LUTHER C. MONTGOMERY  
D. C.

The Defendants call upon the Complainant to answer upon oath the following interrogatories to be used in evidence on behalf of the Defendants at the trial of this case:

(1) Furnish a copy of the contract, dated October 28, 1948, between the Plaintiff and Pond Creek Pocahontas Company? What was the "cost of work" (as defined by such contract) incurred by the Plaintiff in the performance of such contract? What payments were made to the Plaintiff by Pond Creek Pocahontas Company under such contract? What was the maximum net profit the Plaintiff could have earned under this contract? How much of such net profit was the plaintiff paid? What does plaintiff estimate would have been the additional "cost of work" had it completed the work under the contract? What was the actual additional "cost of work" to complete the contract and when was it completed? When does Plaintiff estimate it would have completed the work under the contract had it not been cancelled?

(2) Furnish a copy of the contract dated December 15, 1948, between the Plaintiff and Spring Fork Development Company? What was the "cost of work" (as defined page 64 } by such contract) incurred by the Plaintiff in the performance of such contract? What payments were made to the Plaintiff by Spring Fork Development Company under such contract? What is the maximum net profit the Plaintiff would have earned under this contract? How much of such net profit was the Plaintiff paid? What does Plaintiff estimate would have been the additional "cost of work" had it completed the work under the contract? What was the actual additional "cost of work" to complete the contract and when was it completed? When does Plaintiff estimate it would have completed the work under the contract had it not been cancelled?

(3) With regard to the aforementioned contracts between the Plaintiff and Pond Creek Pocahontas Company, and between the Plaintiff and Spring Fork Development Company, what percentage of work under each contract was uncompleted on the date the contracts were cancelled?

(4) What were the exact terms of the "arrangement" which the Plaintiff entered into with Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, and on what date was the "arrangement" entered into? Was such "arrangement" reduced to writing?

(5) Was application ever made either by the Plaintiff or by Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, to the National Labor Relations Board, requesting that such Union be certified as the bargaining agent for the employees of the Plaintiff? Was such an application ever made with respect to Richmond Building and Construction Trades Council?

(6) Did the National Labor Relations Board ever certify



Paintsville, Kentucky, Carpenters Local Union page 65 } No. 646, American Federation of Labor, as the bargaining agent for employees of the Plaintiff, and if so, what employees of the Plaintiff were included in the bargaining unit? Has Richmond Building and Construction Trades Council ever been so certified, and if so, what employees were included in the bargaining unit?

(7) On page 2 of the Notice of Motion for Judgment, it is stated: "On or about July 14, 1949, one William O. Hart, of Pikesville, Kentucky, communicated by telephone with the Plaintiff \* \* \*". Who was the officer, agent or employee of the Plaintiff with whom Hart allegedly communicated?

(8) Was the Plaintiff adhering to all of the terms of the contract between the Plaintiff and Richmond Building and Construction Trades Council (attached to the Notice of Motion for Judgment and marked Exhibit "A") between the dates July 14, 1949 and August 4, 1949?

(9) Pursuant to Article VI(I) of the contract (attached to the Notice of Motion for Judgment and marked Exhibit "A"), with what "Local Unions" had the plaintiff, as of July 14, 1949, a prevailing wage rate which had been established as the result of collective bargaining, and if so, what are all the crafts and trades which were covered thereby?

(10) Under the contract (attached to the Notice of Motion for Judgment and marked Exhibit "A"), what is the area over which the "Local Unions" have jurisdiction?

(11) With respect to all persons who were employed by the Plaintiff in the performance of the contracts with Pond Creek Pocahontas Company and Spring Fork Development Company between the dates of July 10, 1949, and August 4, 1949, what are their names; what were their addresses on August 4, 1949; what are their present addresses; page 66 } in what capacity and at what rate of pay were they employed by the Plaintiff?

(12) It is alleged on page 4 of the Notice of Motion for Judgment that "Said Hart and the mob of men headed by him were informed that workmen on said job were members of Local Unions affiliated with the American Federation of Labor or had made application to become members of such local unions." Who allegedly so informed Hart?

(13) What is the name of the Kentucky State Police Officer to whom the Plaintiff allegedly appealed for assistance?

(14) At page 14 of the Notice of Motion for Judgment, it is alleged: "\* \* \* and further caused Plaintiff to lose other contracts for work which would have resulted in large profits to Plaintiff." What are the contracts, and the dollar value of the work to be done thereunder, which it is alleged that

the Defendants caused the Plaintiff to lose? What were the bids, if any, made by the Plaintiff on such contracts? On what basis were such bids made? What contracts, if any, is it alleged that the Defendants caused the Plaintiff to lose on which the Plaintiff did not bid?

(15) What was the net profit, before taxes, of the Plaintiff in 1949 and in each of the five years next preceding 1949?

(16) What is the net worth of the Plaintiff?

(17) Furnish a copy of Plaintiff's balance sheet for 1948 and 1949. On what date was Plaintiff domesticated, i. e., qualified to do business in Kentucky? Is it still so qualified, and if not, when was such qualification terminated?

(18) What was the total dollar volume of work performed by the Plaintiff in the State of Kentucky in 1949 page 67 } and in each of the five years next preceding 1949? Furnish same for Virginia and West Virginia.

(19) What was the value placed on "goodwill" in the Plaintiff's balance sheet as of December 31, 1949? As of December 31, 1948?

(20) What is each and every item comprising the plaintiff's alleged damages of \$500,000?

(21) On July 13, 1949, which employees of the Plaintiff, requested in question (11), were employed in connection with the Pond Creek Pocahontas contract and which were employed in connection with the Spring Fork Development Company contract? What was the minimum number of such employees with which the Plaintiff could have prosecuted the work on each of these contracts?

(22) What is the actual cost value of all the tools and equipment owned by Plaintiff which were located on the situs of the work on the day the contracts were cancelled?

UNITED CONSTRUCTION WORKERS  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA; DISTRICT  
50, UNITED MINE WORKERS OF  
AMERICA, AND UNITED MINE  
WORKERS OF AMERICA, Defendants  
By Counsel.

WILLIAMS, MULLEN & HAZELGROVE,  
By FRED G. POLLARD

Memorandum to Clerk:

Please make returnable on July 10, 1950, and serve sum-

mons on A. Hamilton Bryan, President Laburnum Construction Corporation.

FRED G. POLLARD

June 19, 1950.

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\* \* \* \* \*

This day came the Plaintiff, by counsel, and moved the Court to extend the time for answering or otherwise moving or acting upon the interrogatories filed herein until September 20, 1950, and it appearing to the Court that additional time should be granted Plaintiff it is ordered that the time for filing answer or for taking such action as Plaintiff may be advised upon the interrogatories propounded to Plaintiff be and the same hereby is extended until September 20, 1950.

HAROLD F. SNEAD

7/7/50.

\* \* \* \* \*

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\* \* \* \* \*

1950, Sept. 20. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

ANSWER OF LABURNUM CONSTRUCTION CORPORATION  
TO SUMMONS OF THE DEFENDANTS TO  
ANSWER INTERROGATORIES.

For answer to the summons directed by the Defendants to Plaintiff Laburnum Construction Corporation to answer certain interrogatories filed in the Clerk's Office of the Circuit Court of the City of Richmond, plaintiff Laburnum Construction Corporation answers and says:

1. (a) Q. Furnish a copy of the contract, dated October 28, 1948, between the Plaintiff and Pond Creek Pocahontas Company.

A. Attached hereto is a copy of the contract between Plaintiff and Pond Creek Pocahontas Company dated October 28, 1948.

(b) Q. What was the "cost of work" (as defined by such contract) incurred by the Plaintiff in the performance of such contract?

A. The contract between Plaintiff and Pond Creek Pocahontas Company dated October 28, 1948, provided page 72 } for the construction of a Coal Preparation Plant at the No. 1 Kentucky Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky. As defined in said contract, the "cost of work" incurred by Plaintiff in connection with the construction of said Coal Preparation Plant amounted to the sum of \$251,546.90.

As additional work under said contract dated October 28, 1948, Pond Creek Pocahontas Company awarded to Plaintiff the construction of a Schoolhouse near said No. 1 Kentucky Mine. As defined in said contract, the "cost of work" incurred by Plaintiff in connection with the construction of said Schoolhouse amounted to the sum of \$606.83.

(c) Q. What payments were made to the Plaintiff by Pond Creek Pocahontas Company under such contract?

A. The payments made to Plaintiff by Pond Creek Pocahontas Company under said contract dated October 28, 1948, amounted to the following:

(1) For work performed in connection with said Coal Preparation Plant, the payments amounted to the sum of \$265,370.09.

(2) For work performed in connection with the construction of said Schoolhouse, the payments amounted to the sum of \$637.16.

(d) Q. What was the maximum net profit the Plaintiff could have earned under this contract?

A. The maximum net profit which Plaintiff could have earned under said contract dated October 28, 1948, for work in connection with the construction of said Coal Preparation Plant was the sum of \$12,000.00. With respect to the construction of said Schoolhouse and page 73 } other work in addition to said Coal Preparation Plant, there was no limitation to the net profit which Plaintiff could have earned under said contract. Such

net profit, however, would have been equal to five per cent of the "cost of work".

(e) Q. How much of such net profit was the Plaintiff paid?

A. Pond Creek Pocahontas Company paid Plaintiff a fee of \$12,000.00 for work performed in connection with the construction of said Coal Preparation Plant. Pond Creek Pocahontas Company paid Plaintiff for work performed in connection with the construction of said Schoolhouse a fee of \$30.33, being five per cent of the "cost of work" amounting to \$637.16 on the Schoolhouse.

(f) Q. What does Plaintiff estimate would have been the additional "cost of work" had it completed the work under the contract?

A. Had Plaintiff completed its work under said contract in connection with the construction of said Coal Preparation Plant, Plaintiff estimates that the additional "cost of work" on said Coal Preparation Plant would have been the sum of approximately \$15,000.00. In this connection, the Plaintiff states the following:

Pond Creek Pocahontas Company had agreed to award Plaintiff considerable work in addition to said Coal Preparation Plant, a portion of which additional work was the construction of said Schoolhouse. The above estimate of \$15,000.00 includes only the additional cost of completing work on said Coal Preparation Plant. It does not include the estimated cost of completing said Schoolhouse or of performing other work in addition to said Coal Preparation Plant and said Schoolhouse.

page 74 } (g) Q. What was the actual additional "cost of work" to complete the contract and when was it completed?

A. Plaintiff does not know the answer to this question.

(h) Q. When does Plaintiff estimate it would have completed the work under the contract had it not been cancelled?

A. With respect to Plaintiff's work on said Coal Preparation Plant, Plaintiff estimates it could have completed this work on or about September 1, 1949, had not work under said contract been cancelled. With respect to work under said contract in addition to the construction of said Coal Preparation Plant, which Pond Creek Pocahontas Company had agreed to award Plaintiff, Plaintiff does not know when it would have completed such additional work. Had it not been for the actions of the Defendants herein as shown in the Notice of Motion for Judgment, Plaintiff believes that it would

still be working for Pond Creek Pocahontas Company at or near the site if its mines in Breathitt County, Kentucky.

2. (a) Q. Furnish a copy of the contract dated December 15, 1948, between the Plaintiff and Spring Fork Development Company.

A. Attached hereto is a copy of the contract between Plaintiff and Spring Fork Development Company dated December 15, 1948.

(b) Q. What was the "cost of work" (as defined by such contract) incurred by the Plaintiff in the performance of such contract?

page 75 } A. The contract between Plaintiff and Spring Fork Development Company dated December 15, 1948, provided for the construction of twenty-five dwellings on sites near the No. 1 Kentucky Mine of Pond Creek Pocahontas Company, Breathitt County, Kentucky. As defined in said contract, the "cost of work" incurred by Plaintiff in connection with the construction of said twenty-five dwellings amounted to the sum of \$39,316.24.

(c) Q. What payments were made to the Plaintiff by Spring Fork Development Company under such contract?

A. The payments made to Plaintiff by Spring Fork Development Company under such contract amounted to the sum of \$41,282.05.

(d) Q. What is the maximum net profit the Plaintiff would have earned under this contract?

A. The maximum net profit which Plaintiff would have earned under said contract for work in connection with the construction of said twenty-five dwellings was the sum of \$2,500.00. With respect to other work in addition to said twenty-five dwellings, there was no limitation to the net profit which Plaintiff could have earned under said contract. Such net profit, however, would have been equal to five per cent of the "cost of work".

(e) Q. How much of such net profit was the Plaintiff paid?

A. Spring Fork Development Company paid Plaintiff a fee of \$1,965.81 for work performed in connection with the construction of said twenty-five dwellings.

(f) Q. What does Plaintiff estimate would have been the additional "cost of work" had it completed the work under the contract?

page 76 } A. Had Plaintiff completed its work under said contract dated December 15, 1948, in connection with the construction of said twenty-five dwellings, Plaintiff estimates that the additional "cost of work" would have been from \$4,000.00 to \$10,000.00 depending upon what work

Spring Fork Development Company wished to have performed. In this connection, the Plaintiff states the following:

Pond Creek Pocahontas Company, the parent corporation of Spring Fork Development Company, had agreed that considerable additional work would be awarded Plaintiff either under Plaintiff's contract with Pond Creek Pocahontas Company dated October 28, 1948, or under the Plaintiff's contract with Spring Fork Development Company dated December 15, 1948. The above estimate of from \$4,000.00 to \$10,000.00 includes only the additional cost of completing work on said twenty-five dwellings. It does not include the estimated cost of performing the additional work which Pond Creek Pocahontas Company had agreed to award to Plaintiff.

(g) Q. What was the actual additional "cost of work" to complete the contract and when was it completed?

A. Plaintiff does not know the answer to this question.

(h) Q. When does Plaintiff estimate it would have completed the work under the contract had it not been cancelled?

A. With respect to Plaintiff's work on said twenty-five dwellings, Plaintiff estimates it would have completed this work on or about September 1, 1949. had not work under said contract been cancelled. With respect to work under said contract in addition to the construction of said twenty-five dwellings, Plaintiff does not know when it would have completed such additional work. Had it not been for the actions of the Defendants herein as shown in the Notice of Motion for Judgment, Plaintiff believes it would page 77 } still be working for Pond Creek Pocahontas Company or Spring Fork Development Company at or near the site of the mines of Pond Creek Pocahontas Company in Breathitt County, Kentucky.

3. (a) Q. With regard to the aforementioned contracts between the Plaintiff and Pond Creek Pocahontas Company, and between the Plaintiff and Spring Fork Development Company, what percentage of work under each contract was uncompleted on the date the contracts were cancelled?

A. With respect to the contract between the Plaintiff and Pond Creek Pocahontas Company dated October 28, 1948, Plaintiff estimates approximately five per cent of the work under said contract in connection with the Coal Preparation Plant was uncompleted on the date that contract was cancelled.

With respect to the contract between Plaintiff and Spring



Fork Development Company dated December 15, 1948, Plaintiff estimates approximately ten per cent of the work under said contract in connection with the twenty-five dwellings was uncompleted on the date the contract was cancelled.

4. (a) Q. What were the exact terms of the "arrangement" which the Plaintiff entered into with Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, and on what date was the "arrangement" entered into?

A. The "arrangement" between Plaintiff and Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, is shown in an agreement dated December 14, 1948, copy of which is attached hereto.

(b) Q. Was such "arrangement" reduced to writing?

A. Yes.

5. (a) Q. Was application ever made either by the Plaintiff or by Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, to the National Labor Relations Board, requesting that such Union be certified as the bargaining agent for the employees of the Plaintiff?

A. Plaintiff has not made any application to the National Labor Relations Board requesting that Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, be certified as bargaining agent for the employees of Plaintiff.

Plaintiff does not know whether Paintsville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, ever made application to the National Labor Relations Board requesting that it be certified as bargaining agent for the employees of Plaintiff.

(b) Q. Was such an application ever made with respect to Richmond Building and Construction Trades Council?

A. Plaintiff has not made any application to the National Labor Relations Board requesting that Richmond Building and Construction Trades Council be certified as bargaining agent for the employees of Plaintiff.

Plaintiff does not know whether Richmond Building and Construction Trades Council ever made application to the National Labor Relations Board requesting that said Council be certified as bargaining agent for the employees of Plaintiff.

6. (a) Q. Did the National Labor Relations Board ever certify Paintsville, Kentucky, Carpenters Local Union No.

646, American Federation of Labor, as the bargaining agent for employees of the Plaintiff, and if so, what employees of the Plaintiff were included in the bargaining unit?

A. As far as Plaintiff knows and has been advised, the National Labor Relations Board has never certified Paints-ville, Kentucky, Carpenters Local Union No. 646, American Federation of Labor, as bargaining agent for employees of Plaintiff.

(b) Q. Has Richmond Building and Construction Trades Council ever been so certified, and if so, what employees were included in the bargaining unit?

A. As far as Plaintiff knows and has been advised, the National Labor Relations Board has never certified Richmond Building and Construction Trades Council as bargaining agent for employees of Plaintiff.

7. (a) Q. On page 2 of the Notice of Motion for Judgment, it is stated: "On or about July 14, 1949, one William O. Hart, of Pikesville, Kentucky, communicated by telephone with the Plaintiff \* \* \*". Who was the officer, agent or employee of the Plaintiff with whom Hart allegedly communicated?

A. The officer, agent or employee of Plaintiff with whom William O. Hart communicated by telephone on or about July 14, 1949, was A. Hamilton Bryan, President of Laburnum Construction Corporation.

page 80 } 8. (a) Q. Was the Plaintiff adhering to all of the terms of the contract between the Plaintiff and Richmond Building and Construction Trades Council (attached to the Notice of Motion for Judgment and marked Exhibit "A") between the dates July 14, 1949, and August 4, 1949?

A. With respect to the contract between Plaintiff and Richmond Building and Construction Trades Council (attached to the Notice of Motion for Judgment and marked Exhibit "A") Plaintiff, between the dates July 14, 1949, and August 4, 1949, was adhering to the terms of that contract in a manner satisfactory to said Richmond Building and Construction Trades Council.

9. (a) Q. Pursuant to Article VI(I) of the contract (attached to the Notice of Motion for Judgment and marked Exhibit "A"), with what "Local Unions" had the plaintiff, as of July 14, 1949, a prevailing wage rate which had been established as the result of collective bargaining, and if so, what are all the crafts and trades which were covered thereby?

A. Article VI(1) of the contract (attached to the Notice

of Motion for Judgment and marked Exhibit "A") does not pertain to wage rates established as the result of collective bargaining. Plaintiff does not understand this question and therefore is unable to answer it.

10. (a) Q. Under the contract (attached to the Notice of Motion for Judgment and marked Exhibit "A"), what is the area over which the "Local Unions" have jurisdiction?

A. Plaintiff is advised that the area over which page 81 } each Local Union has jurisdiction is determined and fixed by the International Union with which it is affiliated.

11. (a) Q. With respect to all persons who were employed by the Plaintiff in the performance of the contracts with Pond Creek Pocahontas Company and Spring Fork Development Company between the dates of July 10, 1949, and August 4, 1949, what are their names; what were their addresses on August 4, 1949; what are their present addresses; in what capacity and at what rate of pay were they employed by the Plaintiff?

A. Plaintiff declines to answer this question except under order of the Court.

12. (a) Q. It is alleged on page 4 of the Notice of Motion for Judgment that "Said Hart and the mob of men headed by him were informed that workmen on said job were members of Local Unions affiliated with the American Federation of Labor or had made application to become members of such local unions". Who allegedly so informed Hart?

A. Plaintiff declines to answer this question except under order of the Court.

13. (a) Q. What is the name of the Kentucky State Police Officer to whom the Plaintiff allegedly appealed for assistance?

A. Plaintiff declines to answer this question except under order of the Court.

14. (a) Q. At page 14 of the Notice of Motion for Judgment, it is alleged: " \* \* \* and further caused Plaintiff to lose other contracts for work which would have page 82 } resulted in large profits to Plaintiff." What are the contracts, and the dollar value of the work to be done thereunder, which it is alleged that the Defendants caused the Plaintiff to lose? What were the bids, if any, made by the Plaintiff on such contracts? On what basis were such bids made? What contracts, if any, is it alleged that

the Defendants caused the Plaintiff to lose on which the Plaintiff did not bid?

A. On or about October 28, 1948, Pond Creek Pocahontas Company awarded to Laburnum Construction Corporation a contract dated October 28, 1948, for the construction of a Coal Preparation Plant at the No. 1 Kentucky Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky.

The work of Laburnum Construction Corporation on the Coal Preparation Plant was to be commenced on or about November 1, 1948, and was to be completed at the earliest possible date. Based on material delivery promises, Pond Creek Pocahontas Company estimated that this work could be completed by May 1, 1949.

Pond Creek Pocahontas Company advised Laburnum Construction Corporation that a large part of the work would be performed under winter conditions; that at times the roads leading to and from the job site would probably be impassable; that there were no facilities at the job site to house or feed the employees of Laburnum Construction Corporation; and that it would be necessary for Laburnum Construction Corporation to provide adequate facilities at the job site to house and feed most of its employees. Salyerspage 83 } ville, Kentucky, distant from the job site approximately twenty-five miles, was the nearest town of consequence.

When the contract dated October 28, 1948, was awarded to Laburnum Construction Corporation, Mr. R. E. Salvati, President of Pond Creek Pocahontas Company, Island Creek Coal Company and various associated companies, (at that time Mr. Salvati was Vice-President in charge of operations of Pond Creek Pocahontas Company, Island Creek Coal Company and various associated companies) said that Pond Creek Pocahontas Company had considerable work to be performed in Breathitt County, Kentucky, in addition to the construction of the Coal Preparation Plant at the No. 1 Kentucky Mine. This additional work included, among other things, 200 Houses, 10 Supervisors Houses, one Large Store, one Service Store, a Change House, a Lamp House, a Superintendent's Office, Machine Shops, a Warehouse Building, a Sand House, a Church, a Schoolhouse, a water system, and concrete foundations for a Coal Preparation Plant at the proposed No. 2 Mine (now called No. 3 mine) of Pond Creek Pocahontas Company.

Mr. Salvati said that he wanted Laburnum Construction Corporation also to handle this additional work, the first thing to be done in that connection being the construction of 25 dwellings. Work on the 25 dwellings was to be commenced

promptly. Mr. Salvati said, however, that the most important thing to be done was to rush to completion at the earliest possible date work on the Coal Preparation Plant at the No. 1 Mine. The remainder of the additional work page 84 } would then follow.

With reference to the 25 dwellings, Mr. Salvati said that Pond Creek Pocahontas Company would form a subsidiary corporation which would enter into an agreement with Laburnum Construction Corporation for that work.

It was agreed with Mr. Salvati that Laburnum Construction Corporation would perform this additional work on a basis of cost plus a fee of five per cent. Mr. Salvati said that since Laburnum Construction Corporation would already have its organization, tools and equipment at the job site, it should be in a better position to perform the additional work than any other contractor. He also said that Pond Creek Pocahontas Company felt obligated to have Laburnum Construction Corporation perform the additional work because of the extremely difficult conditions under which the Coal Preparation Plant would be constructed. The additional work, for the most part, would be performed under much more favorable conditions.

Pursuant to the above agreement with Mr. Salvati, Laburnum Construction Corporation entered into a contract with Spring Fork Development Company, a wholly owned subsidiary of Pond Creek Pocahontas Company, dated December 15, 1948, for the construction of said 25 dwellings. This work was to be performed on a basis of cost plus a fee of five per cent, the total fee not to exceed the sum of \$2,500.00.

Also pursuant to the above agreement with Mr. Salvati,

Pond Creek Pocahontas Company awarded to Laburnum Construction Corporation a contract dated page 85 }

December 8, 1948, for the construction of a telephone line approximately eleven miles in length extending from Carver, Kentucky, to the No. 1 Mine of Pond Creek Pocahontas Company. This work was performed on a basis of cost plus a fee of five per cent.

Also pursuant to the above agreement with Mr. Salvati, Pond Creek Pocahontas Company during July, 1949, instructed Laburnum Construction Corporation to construct a Schoolhouse near the No. 1 Mine of Pond Creek Pocahontas Company. Laburnum Construction Corporation commenced work on said Schoolhouse during the week ended July 17, 1949, and was working on that project on July 26, 1949, when its work was interrupted by the actions of the Defendants herein as shown in the Notice of Motion for Judgment. The

Schoolhouse was to be constructed by Laburnum Construction Corporation on the basis of cost plus a fee of five per cent.

Also pursuant to the above agreement with Mr. Salvati, during July, 1949, Pond Creek Pocahontas Company advised Laburnum Construction Corporation that it should prepare to install concrete foundations for the Coal Preparation Plant for the No. 2 Mine (now called No. 3 Mine) of Pond Creek Pocahontas Company. It was estimated that the cost of this work would amount to approximately \$25,000.00. The work was to be commenced by Laburnum Construction Corporation during August, 1949, and was to be performed on a basis of cost plus a fee of five per cent. Laburnum Construction Corporation did not commence work on this job, having been prevented from doing so by the actions of the Defendants herein as shown in the Notice of Motion for Judgment.

Also pursuant to the above agreement with Mr. Salvati, Pond Creek Pocahontas Company advised Laburnum Construction Corporation during July, 1949, that it should prepare to install asbestos shingles on the 25 dwellings referred to above. This work was to be commenced by Laburnum Construction Corporation during August, 1949, and was to be performed on the basis of cost plus a fee of five per cent. Laburnum Construction Corporation did not commence work on this job, having been prevented from doing so by the actions of the Defendants herein as shown in the Notice of Motion for Judgment.

After August 4, 1949, Pond Creek Pocahontas Company decided to enlarge the Coal Preparation Plant at the No. 1 Mine by constructing an addition on the rear thereof. This was additional work which, pursuant to the above agreement with Mr. Salvati, would have been performed by Laburnum Construction Corporation on a basis of cost plus five per cent. Laburnum Construction Corporation was prevented from performing this work by the actions of the Defendants herein as shown in the Notice of Motion for Judgment.

With respect to the additional work which, under the above agreement with Mr. Salvati, was to be performed by Laburnum Construction Corporation for Pond Creek Pocahontas Company in Breathitt County, Kentucky, on a basis of cost plus a fee of five per cent, this additional work amounted to a sum in excess of \$600,000.00. Laburnum Construction Corporation would have earned a net job profit of over \$30,000.00 on this additional work. The actions of the Defendants herein as shown in the Notice of Motion for Judgment destroyed the opportunity of



Laburnum Construction Corporation to perform the additional work and to earn profits therefrom.

A tabulation of this additional work is as follows:

Machine Shop	\$ 60,000.00
Lamp House, Supt. Office and Oil House	12,000.00
Warehouse Building	25,000.00
200 Houses	300,000.00
10 Supervisors' Houses	60,000.00
1 Large Store	75,000.00
1 Service Store	15,000.00
Heating Plant for Tipple at Mine No. 1	23,000.00
Tipple Shop	3,000.00
Foundations for Tipple at Mine No. 2 (now called Mine No. 3)	25,000.00
Sand House	7,000.00
Water System	12,500.00
	<hr/>
	\$617,500.00

During the years 1947, 1948 and 1949 Pond Creek Pocahontas Company and Island Creek Coal Company and their associated or subsidiary companies awarded to Laburnum Construction Corporation twelve separate contracts for construction work in the States of Kentucky and West Virginia amounting to a total of more than \$650,000.00. Laburnum Construction Corporation earned a substantial net profit on these jobs. Pond Creek Pocahontas Company and Island Creek Coal Company, though separate corporations, have a common management.

Since August 4, 1949, the date as of which the two contracts dated October 28, 1948, and December 15, 1948, page 88 } were terminated, no other contract for additional work has been awarded to Laburnum Construction Corporation by either Pond Creek Pocahontas Company or Island Creek Coal Company or their associated or subsidiary companies. The business relationship and connection which Laburnum Construction Corporation had built up with Pond Creek Pocahontas Company, Island Creek Coal Company and their associated and subsidiary companies had resulted in substantial net job profits to Laburnum Construction Corporation. This business relationship and connection would have continued to result in substantial profits to Laburnum Construction Corporation. This business relationship and connection has been completely destroyed by the actions of

the Defendants herein as shown in the Notice of Motion for Judgment. This has resulted in a large loss to Laburnum Construction Corporation.

15. (a) Q. What was the net profit, before taxes, of the Plaintiff in 1949 and in each of the five years next preceding 1949?

A. Plaintiff declines to answer this question except under order of the Court.

16. (a) Q. What is the net worth of the Plaintiff?

A. Plaintiff declines to answer this question except under order of the Court.

17. (a) Q. Furnish a copy of Plaintiff's balance sheet for 1948 and 1949.

A. Plaintiff declines to furnish this information except under order of the Court.

page 89 } (b) Q. On what date was Plaintiff domesticated, i. e., qualified to do business in Kentucky?

A. Plaintiff became domesticated, i. e., qualified to do business in Kentucky on October 28, 1948.

(c) Q. Is it still so qualified, and if not, when was such qualification terminated?

A. Yes, Plaintiff is still so qualified.

18. (a) Q. What was the total dollar volume of work performed by the Plaintiff in the State of Kentucky in 1949 and in each of the five years next preceding 1949?

A. Plaintiff declines to answer this question except under order of the Court.

(b) Q. Furnish same for Virginia and West Virginia.

A. Plaintiff declines to furnish this information except under order of the Court.

19. (a) Q. What was the value placed on "goodwill" in the Plaintiff's balance sheet as of December 31, 1949?

A. Plaintiff declines to answer this question except under order of the Court.

(b) Q. As of December 31, 1948?

A. Plaintiff declines to answer this question except under order of the Court.



20. (a) Q. What is each and every item comprising the plaintiff's alleged damages of \$500,000?

A. Plaintiff declines to answer this question except under order of the Court.

21. (a) Q. On July 13, 1949, which employees of the plaintiff, requested in question (11), were employed in connection with the Pond Creek Pocahontas contract and which were employed in connection with the Spring Fork Depage 90 } velopment Company contract?

A. Plaintiff declines to answer this question except under order of the Court.

(b) Q. What was the minimum number of such employees with which the Plaintiff could have prosecuted the work on each of these contracts?

A. Plaintiff declines to answer this question except under order of the Court.

22. (a) Q. What is the actual cost value of all the tools and equipment owned by Plaintiff which were located on the situs of the work on the day the contracts were cancelled?

A. \$16,047.90.

LABURNUM CONSTRUCTION CORPORATION

By A. HAMILTON BRYAN, Pres.

page 91 } State of Virginia,  
City of Richmond, to-wit:

This day A. Hamilton Bryan personally appeared before me, Phyllis C. Burkey, a Notary Public in and for the City and State aforesaid in my City aforesaid and made oath that he is President and agent of Laburnum Construction Corporation and as such he is authorized to make this affidavit, and the said A. Hamilton Bryan further made oath that the matters and things stated in the foregoing Answer of Laburnum Construction Corporation to Summons of the Defendants to Answer Interrogatories are in all respects true and correct to the best of his information, knowledge and belief.

Given under my hand this 19th day of September, 1950.

My commission expires August 31, 1951.

PHYLLIS C. BURKEY  
Notary Public

page 92 } CONSTRUCTION AGREEMENT.

CONSTRUCTION OF COAL PREPARATION PLANT AT  
NO. 1 KENTUCKY MINE, BREATHITT COUNTY,  
KENTUCKY.

THIS AGREEMENT, made this 28th day of October, 1948, by and between LABURNUM CONSTRUCTION CORPORATION, a Virginia Corporation, of Richmond, Virginia, hereinafter called "Contractor"; and POND CREEK POCAHONTAS COMPANY, Kentucky Division, a Maine Corporation, of Huntington, West Virginia, hereinafter called "Pond Creek";

WITNESSETH:

WHEREAS, Pond Creek desires the Contractor to perform certain work in connection with the construction of a Coal Preparation Plant, including a Washery, at its No. 1 Kentucky Mine located on Spring Branch of Quicksand Creek in Breathitt County, Kentucky; and,

WHEREAS, the Contractor is willing to undertake such work:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for and in consideration of the premises, the parties hereto do hereby agree as follows:

ARTICLE I.

**SCOPE OF WORK:** The work shall consist of installing concrete foundations, erecting wood structures complete, erecting plate work, the installation of machinery and equipment, electrical installations and power and light wiring, plumbing, heating and piping, a Rope and Button Conveyor approximately 1,000' in length, a Headhouse with bins and other work required for the operation of the Coal Preparation Plant and the machinery and equipment to be located therein.

Contractor shall furnish labor, supervision and services, together with all construction tools and equipment, supplies and materials not furnished by Pond Creek, necessary to perform the work in accordance with designs and specifications furnished or to be furnished by Pond Creek to Contractor.

It is understood that Pond Creek intends to furnish to Con-

tractor at the job site materials, supplies, tools and equipment necessary for the work. Pond Creek, however, may request Contractor to furnish any of these items, or page 93 } portions thereof, and in that event Contractor shall undertake to comply with such request as promptly as possible.

With respect to subcontracts made and purchase orders issued by Contractor for necessary materials, supplies, tools, equipment and services to be furnished by it, Contractor agrees that, subject to prior approval by Pond Creek as provided in Article V, all such subcontracts and purchase orders shall be made or issued in Contractor's own name, title to materials to pass to Pond Creek upon delivery at site of work, excepting, however, equipment, tools and other items brought to site on rental basis.

## ARTICLE II.

**CONSIDERATION:** Pond Creek agrees to pay the Cost of the Work as defined in the "Statement of Cost of Work" attached hereto and made a part of this agreement. In addition, Pond Creek agrees to pay Contractor a sum equal to five (5) per cent of the Cost of Work, Items (a) to (r), inclusive, in the "Statement of Cost of Work", as its fee for doing the work covered in Article I of this Agreement, the total fee, however, not to exceed the sum of \$12,000.00. The fee shall be paid in weekly installments, based upon amount of work done, as evidenced by weekly billings.

In addition to payment for the Cost of the Work to be performed by Contractor, Pond Creek shall pay Contractor the actual traveling and living costs (but not salaries) of Contractor's main office and executive personnel when traveling to and from and while present at the job site in furtherance of the work, but not to exceed, however, the sum of \$2,500.00 for the first six months of the duration of the job, and not to exceed thereafter an amount equal to two (2) per cent of such straight time labor costs as may be incurred after that six months period.

## ARTICLE III.

**ESTIMATED COST:** It is estimated that the Cost of the Work will amount to approximately \$200,000.00. However, neither the Contractor nor Pond Creek guarantees the accuracy of this estimate.

#### ARTICLE IV.

**TIME OF COMPLETION:** Work at the site shall be started on or about November 1, 1948, and every effort shall be made to complete the work at the earliest possible date. Pond Creek states that present delivery promises for materials indicate that this work can be completed by May 1, 1949.

Pond Creek agrees that Contractor shall not be liable to Pond Creek for failure of or delay in performance hereof, when such failure or delay is occasioned by act of God, or the public enemy, fire, explosion, perils of the sea, page 94 } flood, drought, war, riots sabotage, vandalism, accident, embargo government priority, requisition or allocation or other action of any governmental authority, or any circumstance of like or different character beyond Contractor's reasonable control, or by interruption of or delay on transportation, shortage or failure of supply of material or equipment, failure of manufacturers or suppliers to make delivery or complete the installation of equipment to be furnished by them.

And provided further, if Pond Creek shall be in default with respect to any of the terms or conditions hereof, Contractor, at its option, may defer further performance hereunder until such default be remedied (in which event the Agreement period shall be deemed extended for a period of time equal to that during which performance shall be so deferred), or, without prejudice to any other legal remedy, may decline further performance of this Agreement. In the event of a postponement or declination of performance hereunder, on account of Pond Creek's default, Pond Creek shall reimburse Contractor for all damage, cost or expense suffered by it on account of such postponement and or declination.

#### ARTICLE V.

**APPROVALS REQUIRED:** Pond Creek designates Mr. W. A. Haslam as its representative to act for it in connection with this Agreement. He shall be available as often as may be necessary for inspecting and approving the work, or authorizing changes therein, and for approving currently all purchases, payrolls, invoices, and other records of Contractor.

Contractor shall procure the representative's written approval before entering into any single subcontract involving work on the property of Pond Creek, or before issuing any single purchase order for a sum in excess of \$500.00.

The representative may delegate his work and authority to others as he may desire, confirming such action in writing to Contractor.

#### ARTICLE VI.

**CANCELLATION:** Contractor agrees that Pond Creek may stop the work at any stage during its progress and terminate Contractor's employment thereon upon ten (10) day's written notice. In case of such termination, Contractor shall receive, under the terms of this Agreement, payment for all expenditures made and obligations incurred which are chargeable as Cost of the Work; the fee for the portion of the work performed; and such amount as may be due Contractor for actual traveling and living costs of its main office and executive personnel.

#### ARTICLE VII.

**COOPERATION:** It is the intent of this Agreement that Pond Creek and Contractor shall cooperate, and  
page 95 } use every effort to execute the work in a manner  
consistent with the interests of Pond Creek and  
in accordance with Pond Creek's requests and approvals.

#### ARTICLE VIII.

**COMPLIANCE WITH LAW:** Contractor shall comply with all local, state, Federal, or other public laws applicable to the work; provided, however, that Pond Creek shall obtain all permits which may be required in connection with the performance of this Agreement.

#### ARTICLE IX.

**LIENS:** In the event that Contractor allows any indebtedness to accumulate for labor and/or materials, which indebtedness has become or may become a lien upon the property of Pond Creek, or which may become a claim against Pond Creek, Contractor, upon receipt of written request from Pond Creek, shall pay the same or cause the same to be dissolved, or discharged by giving a bond or otherwise, and in case Contractor fails so to do, Pond Creek may withhold from any moneys due Contractor an amount sufficient to indemnify Pond Creek until such indebtedness is paid.

#### ARTICLE X.

**INSURANCE:** Contractor covenants that, during the progress of the work described herein, it will comply with the laws of Kentucky respecting Workmen's Compensation Insurance; and will procure and maintain during the progress of the work Public Liability and Property Damage Insurance satisfactory to Pond Creek and also such other insurance as may be required by Pond Creek. Prior to the commencement of work hereunder, Contractor will furnish proof to Pond Creek that it has complied with the above requirements.

Pond Creek shall carry and maintain during the progress of the work adequate Builders' Risk Insurance with extended coverage, protecting the work and materials at the job site against loss, which insurance shall be for its benefit as well as for the benefit of the Contractor.

#### ARTICLE XI.

**INDEMNIFICATION:** Contractor shall indemnify and save harmless Pond Creek from and against all loss, damage, expense or liability for injury (including death) to persons or property that may occur or may be alleged to have occurred in the course of the performance of this Agreement by the Contractor; provided, however, that Contractor's liability hereunder shall not exceed the monetary limits of the Contractual Liability Insurance Contractor is required to carry by Pond Creek.

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#### ARTICLE XII.

**ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

#### ARTICLE XIII.

**COMPLETENESS OF AGREEMENT:** This Agreement constitutes the entire contract between the parties, and there are no understandings, representations or warranties of any kind not expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have duly

executed this Agreement, in duplicate, as of the day and year above written.

LABURNUM CONSTRUCTION CORPO-  
RATION

By /s/ A. HAMILTON BRYAN  
President.

ATTEST:  
.....

POND CREEK POCAHONTAS COM-  
PANY

By /s/ R. E. SALVATI, Vice President.

ATTEST:  
.....

page 97 } STATEMENT OF COST OF WORK.

"Cost of Work" means:

All costs and expenses incurred by Contractor at the site of the work (subject to the approval of Pond Creek's representative) for the following items:

a. Wages (on both straight time and overtime basis) of mechanics and laborers at the site of the work, including salaries for supervision and accounting at the site of the work. All wage rates and salaries shall be subject to Pond Creek's prior approval.

b. Traveling expenses and traveling time, or either of them, paid to journeymen and apprentices when required by Union rules and regulations or when necessary to man the job properly; provided, however, this expense shall be subject to prior approval by Pond Creek.

c. Taxes assessed on reimbursable payrolls for Old Age Benefits and Unemployment Insurance.

d. Assessments paid to the National Electrical Benefit Fund on gross wages paid to electrical workers on reimbursable payrolls and other like assessments which are in accordance with the rules and regulations of the local unions.

e. Work at the site sublet to others provided subletting shall have been with Pond Creek's approval.

f. Services furnished by others, provided such services shall have been rendered with Pond Creek's approval.



g. Rental of Contractor's tools and equipment while at the site of the work at rates mutually agreed upon, which rates shall not be in excess of Associated Equipment Distributors' rental rates; the cost of delivering same to the job site and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

page 98 } h. Rental of tools and equipment rented from others specifically for use in connection with the work; the cost of delivering same to the site of the work and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

i. Erection tools and equipment purchased specifically for the work, such items to become the property of Pond Creek upon delivery to the job site.

j. Cost of materials and supplies required for or in connection with the work and not furnished by Pond Creek, including sales or use taxes thereon, if any, and the cost of delivering same to the site of the work.

k. Premiums on Workmen's Compensation Insurance, Public Liability Insurance in the amount of \$100,000/\$300,000, Property Damage Insurance in the amount of \$100,000, Payroll Robbery Insurance and also premiums on any other insurance that Contractor is required by Pond Creek to carry at the site of the work.

l. All freight, trucking or other transportation charges in connection with bringing materials, supplies, tools, equipment or other items to the job site in connection with prosecution of the work.

m. Telegrams, long distance telephone calls, postage, office supplies and equipment and other similar expense incurred directly in connection with the work.

n. The cost of reconstructing and replacing any of the work destroyed or damaged not covered by insurance and not caused by failure on the part of the corporate officers or members of the firm of Contractor, or its other representatives having supervision or direction of the operation of the work as a whole, to exercise good faith or the standard of care which they normally exercise in the conduct of the business of the Contractor, but expenditures under this paragraph must have written approval of Pond Creek in advance.

o. Any sales or use taxes imposed upon the Contractor by the State of Kentucky and resulting from the work covered by this contract.

p. All other items of cost and expense not expressly excluded by the provisions of this contract incurred by the Contractor directly in connection with the prosecution of the work at the job site; provided same shall be approved by Pond Creek.

Cost of the work shall not include the value of power light, water or other facilities furnished by Pond Creek, nor the value of materials or supplies furnished by Pond Creek or rebates accruing to the Contractor on the purchase or return of equipment for the work, nor salaries or expenses of Contractor's home office, or employees regularly assigned thereto.

page 100 } CONSTRUCTION AGREEMENT.

CONSTRUCTION OF TWENTY-FIVE DWELLINGS ON  
SITES NEAR NO. 1 KENTUCKY MINE,  
BREATHITT COUNTY, KENTUCKY.

THIS AGREEMENT, made this 15th day of December, 1948, by and between LABURNUM CONSTRUCTION CORPORATION, a Virginia Corporation, of Richmond, Virginia, hereinafter called "Contractor"; and Spring Fork Development Company, a West Virginia Corporation, of Huntington, W. Va., hereinafter called "Owner":

WITNESSETH:

WHEREAS, Owner desires the Contractor to perform certain work in connection with the construction of twenty-five dwellings to be erected on sites near No. 1 Kentucky Mine of Pond Creek Pocahontas Company, located on Spring Branch of Quicksand Creek in Breathitt County, Kentucky; and,

WHEREAS, the Contractor is willing to undertake such work:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for an in consideration of the premises, the parties hereto do hereby agree as follows:

ARTICLE I.

SCOPE OF WORK: The work shall consist of erecting twenty-five one-story, four-room frame dwellings for miners,

electric wiring and other things necessary to complete said dwellings.

Contractor shall furnish labor, supervision and services, together with all construction tools and equipment, supplies and materials not furnished by Owner, necessary to perform the work in accordance with designs and specifications furnished or to be furnished by Owner to Contractor.

It is understood that Owner intends to furnish to Contractor at the job site materials, supplies, tools and equipment necessary for the work. Owner, however, may request Contractor to furnish any of these items, or portions thereof, and in that event Contractor shall undertake to comply with such request as promptly as possible.

page 101 } With respect to subcontracts made and purchase orders issued by Contractor for necessary materials, supplies, tools, equipment and services to be furnished by it, Contractor agrees that, subject to prior approval by Owner as provided in Article V, all such subcontracts and purchase orders shall be made or issued in Contractor's own name, title to materials to pass to Owner upon delivery at site of work, excepting, however, equipment, tools and other items brought to site on rental basis.

## ARTICLE II.

**CONSIDERATION:** Owner agrees to pay the Cost of the Work as defined in the "Statement of Cost of Work" attached hereto and made a part of this Agreement. In addition, Owner agrees to pay Contractor a sum equal to five (5) per cent of the Cost of Work, Items (a) to (r), inclusive, in the "Statement of Cost of Work", as the fee for doing the work covered in Article 1 of this agreement, the total fee, however, not to exceed the sum of \$2,500.00. The fee shall be paid in weekly installments, based upon the amount of work done, as evidenced by weekly billings.

In addition to payment for the Cost of the Work to be performed by Contractor, Owner shall pay Contractor the actual traveling and living costs (but not salaries) of Contractor's main office and executive personnel when traveling to and from and while present at the job site in furtherance of the work, but not to exceed, however, the sum of \$2,500.00 for the first six months of the duration of the job, and not to exceed thereafter an amount equal to two (2) per cent of such straight time labor costs as may be incurred after that six months period.

## ARTICLE III.

**ESTIMATED COST:** It is estimated that the Cost of the Work will amount to approximately \$20,000.00. However, neither the Contractor nor the Owner guarantees the accuracy of this estimate.

## ARTICLE IV.

**TIME OF COMPLETION:** Work at the site shall be started on or about November 1, 1948, and every effort shall be made to complete the work at the earliest possible date. Owner states that present delivery promises for materials indicate that this work can be completed by May 1, 1949.

Owner agrees that Contractor shall not be liable to Owner for failure of or delay in performance hereof, when such failure or delay is occasioned by act of God, or the public enemy, fire, explosion, périls of the sea, flood, drought, page 102 { war, riots, sabotage, vandalism, accident, embargo, government priority requisition or allocation or other action of any governmental authority, or any circumstance of like or different character beyond Contractor's reasonable control, or by interruption of or delay on transportation, shortage or failure of supply of material or equipment, failure of manufacturers or suppliers to make delivery or complete the installation of equipment to be furnished by them.

And provided further, if Owner shall be in default with respect to any of the terms or conditions hereof, Contractor, at its option, may defer further performance hereunder until such default be remedied (in which event the Agreement period shall be deemed extended for a period of time equal to that during which performance shall be so deferred), or, without prejudice to any other legal remedy, may decline further performance of this Agreement. In the event of a postponement or declination of performance hereunder, on account of Owner's default, Owner shall reimburse Contractor for all damage, cost of expense suffered by it on account of such postponement and/or declination.

## ARTICLE V.

**APPROVALS REQUIRED:** Owner designates Mr. W. A. Haslam as its representative to act for it in connection with

this Agreement. He shall be available as often as may be necessary for inspecting and approving the work, or authorizing changes therein, and for approving currently all purchases, payrolls, invoices, and other records of Contractor.

Contractor shall procure the representative's written approval before entering into any single subcontract involving work on the property of Owner, or before issuing any single purchase order for a sum in excess of \$500.00.

The representative may delegate his work and authority to others as he may desire, confirming such action in writing to Contractor.

#### ARTICLE VI.

**CANCELLATION:** Contractor agrees that Owner may stop the work at any stage during its progress and terminate Contractor's employment thereon upon ten (10) days' written notice. In case of such termination, Contractor shall receive, under the terms of this Agreement, payment for all expenditures made and obligations incurred which are chargeable as Cost of the Work; the fee for the portion of the work performed; and such amount as may be due Contractor for actual traveling and living costs of its main office and executive personnel.

#### ARTICLE VII.

**COOPERATION:** It is the intent of this Agreement that Owner and Contractor shall cooperate, and use page 103 } every effort to execute the work in a manner consistent with the interests of Owner and in accordance with Owner's requests and approvals.

#### ARTICLE VIII.

**COMPLIANCE WITH LAW:** Contractor shall comply with all local, state, Federal, or other public laws applicable to the work; provided, however, that Owner shall obtain all permits which may be required in connection with the performance of this Agreement.

#### ARTICLE IX.

**LIENS:** In the event that Contractor allows any indebted-

ness to accumulate for labor and/or materials, which indebtedness has become or may become a lien upon the property of Owner, or which may become a claim against Owner, Contractor, upon receipt of written request from Owner, shall pay the same or cause the same to be dissolved, or discharged by giving a bond or otherwise, and in case Contractor fails so to do, Owner may withhold from any moneys due Contractor an amount sufficient to indemnify Owner until such indebtedness is paid.

#### ARTICLE X.

**INSURANCE:** Contractor covenants that, during the progress of the work described herein, it will comply with the laws of Kentucky respecting Workmen's Compensation Insurance; and will procure and maintain during the progress of the work Public Liability and Property Damage Insurance satisfactory to Owner and also such other insurance as may be required by Owner. Prior to the commencement of work hereunder, Contractor will furnish proof to Owner that it has complied with the above requirements.

Owner shall carry and maintain during the progress of the work adequate Builders' Risk Insurance with extended coverage, protecting the work and materials at the job site against loss, which insurance shall be for its benefit as well as for the benefit of the Contractor.

#### ARTICLE XI.

**INDEMNIFICATION:** Contractor shall indemnify and save harmless Owner from and against all loss, damage, expense or liability for injury (including death) to persons or property that may occur or may be alleged to have occurred in the course of the performance of this Agreement by the Contractor; provided, however, that Contractor's liability hereunder shall not exceed the monetary limits of the Contractual Liability Insurance Contractor is required to carry by Owner.

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#### ARTICLE XIII.

**COMPLETENESS OF AGREEMENT:** This Agreement constitutes the entire contract between the parties, and there are no understandings, representations or warranties of any kind not expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, in duplicate, as of the day and year above written.

LABURNUM CONSTRUCTION CORPORATION

By /s/ A. HAMILTON BRYAN  
President.

ATTEST:

/s/ ELLA O. SPIERS  
Secretary.

SPRING FORK DEVELOPMENT COMPANY,

By /s/ W. A. OGG  
President.

ATTEST:

/s/ CHARLES L. VILES  
Secretary.

Approved

/s/ R. D. C.  
Counsel.

page 105 } STATEMENT OF COST OF WORK.

"Cost of Work" means:

All costs and expenses incurred by Contractor at the site the work (subject to the approval of Owner's representative) for the following items:

a. Wages (on both straight time and overtime basis) of mechanics and laborers at the site of the work, including salaries for supervision and accounting at the site of the work. All wage rates and salaries shall be subject to Owner's prior approval.

b. Traveling expenses and traveling time, or either of them, paid to journeymen and apprentices when required by Union rules and regulations or when necessary to man the job properly; provided, however, this expense shall be subject to prior approval by Owner.

c. Taxes assessed on reimbursable payrolls for Old Age Benefits and Unemployment Insurance.



d. Assessments paid to the National Electrical Benefit Fund on gross wages paid to electrical workers on reimbursable payrolls and other like assessments which are in accordance with the rules and regulations of the local unions.

e. Work at the site sublet to others provided subletting shall have been with Owner's approval.

f. Services furnished by others, provided such services shall have been rendered with Owner's approval.

g. Rental of Contractor's tools and equipment while at the site of the work at rates mutually agreed upon, which rates shall not be in excess of Associated Equipment Distributors' rental rates; the cost of delivering same to the job site and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

page 106 } h. Rental of tools and equipment rented from others specifically for use in connection with the work; the cost of delivering same to the site of the work and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

i. Erection tools and equipment purchased specifically for the work, such items to become the property of Owner upon delivery to the job site.

j. Cost of materials and supplies required for or in connection with the work and not furnished by Owner, including sales or use taxes thereon, if any, and the cost of delivering same to the site of the work.

k. Premiums on Workmen's Compensation Insurance, Public Liability Insurance in the amount of \$100,000 \$300,000, Property Damage Insurance in the amount of \$100,000, Payroll Robbery Insurance and also premiums on any other insurance that Contractor is required by Owner to carry at the site of the work.

l. All freight, trucking or other transportation charges in connection with bringing materials, supplies, tools, equipment or other items to the job site in connection with prosecution of the work.

m. Telegrams, long distance telephone calls, postage, office supplies and equipment and other similar expense incurred directly in connection with the work.

n. The cost of reconstructing and replacing any of the work destroyed or damaged not covered by insurance and not caused by failure on the part of the corporate officers or members of the firm of Contractor, or its other representatives having supervision or direction of the operation of the work as a whole, to exercise good faith or the standard of care

which they normally exercise in the conduct of the business of the Contractor, but expenditures under this paragraph must have written approval of Owner in advance.  
page 107 } o. Any sales or use taxes imposed upon the Contractor by the State of Kentucky and resulting from the work covered by this contract.

p. All other items of cost and expense not expressly excluded by the provisions of this contract, incurred by the Contractor directly in connection with the prosecution of the work at the job site; provided same shall be approved by Owner.

Cost of the work shall not include the value of power, light, water or other facilities furnished by Owner, nor the value of materials or supplies furnished by Owner or rebates accruing to the Contractor on the purchase or return of equipment for the work, nor salaries or expenses of Contractor's home office, or employees regularly assigned thereto.

page 108 } CONSTRUCTION AGREEMENT.

CONSTRUCTION OF APPROXIMATELY ELEVEN MILES OF TELEPHONE LINE FROM CARVER, KENTUCKY, TO CAMP NO. 1 AT NO 1 KENTUCKY MINE, BREATHITT COUNTY, KENTUCKY.

THIS AGREEMENT, made this 8th day of December, 1948, by and between LABURNUM CONSTRUCTION CORPORATION, a Virginia Corporation, of Richmond, Virginia, hereinafter called "Contractor"; and POND CREEK POCAHONTAS COMPANY, Kentucky Division, a Maine Corporation, of Huntington, West Virginia, hereinafter called "Pond Creek";

WITNESSETH:

WHEREAS, Pond Creek desires the Contractor to construct a telephone line approximately eleven miles in length extending from Carver, Kentucky, to its Camp No. 1 located at its No. 1 Kentucky Mine on Spring Branch of Quicksand Creek in Breathitt County, Kentucky; and,

WHEREAS, the Contractor is willing to undertake such work:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for an in consideration of the premises, the parties hereto do hereby agree as follows:

ARTICLE I.

**SCOPE OF WORK:** The work shall consist of installing a telephone line approximately eleven miles in length, the line to be constructed of No. 14 twisted pair, weather-proof, copper wire, to be strung on trees and to be attached to the trees through a slip type insulator to prevent breakage when the wind sways the trees.

Contractor shall furnish labor, supervision and services, together with all construction tools and equipment, supplies and materials not furnished by Pond Creek, necessary to perform the work in accordance with designs and specifications furnished or to be furnished by Pond Creek to Contractor.

With respect to subcontracts made and purchase orders issued by Contractor for necessary materials, supplies, tools, equipment and services to be furnished by it, Contractor agrees that, subject to prior approval by Pond Creek as provided in Article V, all such subcontracts and purchase orders

shall be made or issued in Contractor's own name,  
page 109 } title to materials to pass to Pond Creek upon delivery at site of work, excepting, however, equipment, tools and other items brought to site on rental basis.

ARTICLE II.

**CONSIDERATION:** Pond Creek agrees to pay the Cost of the Work as defined in the "Statement of Cost of Work" attached hereto and made a part of this Agreement. In addition, Pond Creek agrees to pay Contractor a sum equal to five (5) per cent of the Cost of Work, Items (a) to (p), inclusive, in the "Statement of Cost of Work," as its fee for doing the work covered in Article I of this Agreement. The fee shall be paid in weekly installments, based upon amount of work done, as evidenced by weekly billings.

In addition to payment for the Cost of the Work to be performed by Contractor, Pond Creek shall pay Contractor the actual traveling and living costs (but not salaries) of Contractor's main office and executive personnel when traveling to and from and while present at the job site in furtherance of the work.

### ARTICLE III.

**ESTIMATED COST:** It is estimated that the Cost of the Work will amount to approximately \$4,500.00. However, neither the Contractor nor Pond Creek guarantees the accuracy of this estimate.

### ARTICLE IV.

**TIME OF COMPLETION:** Work shall be started as promptly as possible and every effort shall be made to complete the work on or before December 31, 1948.

Pond Creek agrees that Contractor shall not be liable to Pond Creek for failure of or delay in performance hereof, when such failure or delay is occasioned by act of God, or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riots, sabotage, vandalism, accident, embargo, government priority, requisition or allocation or other action of any governmental authority, or any circumstance of like or different character beyond Contractor's reasonable control, or by interruption of or delay on transportation, shortage or failure of supply of material or equipment, failure of manufacturers or suppliers to make delivery or complete the installation of equipment to be furnished by them.

And provided further, if Pond Creek shall be in default, with respect to any of the terms or conditions hereof, Contractor, at its option, may defer further performance hereunder until such default be remedied (in which event the Agreement period shall be deemed extended for a period of time equal to that during which performance shall be so deferred), or, without prejudice to any other legal remedy, may decline further performance of this Agreement.

page 110 } In the event of a postponement or declination of performance hereunder, on account of Pond Creek's default, Pond Creek shall reimburse Contractor for all damage, cost or expense suffered by it on account of such postponement and/or declination.

### ARTICLE V.

**APPROVALS REQUIRED:** Pond Creek designates Mr. W. A. Haslam as its representative to act for it in connection with this Agreement. He shall be available as often as may be necessary for inspecting and approving the work, or authorizing changes therein, and for approving currently all purchases, payrolls, invoices, and other records of Contractor.

Contractor shall procure the representative's written approval before entering into any single subcontract involving work on the property of Pond Creek, or before issuing any single purchase order for a sum in excess of \$500.00.

The representative may delegate his work and authority to others as he may desire, confirming such action in writing to Contractor.

#### ARTICLE VI.

**CANCELLATION:** Contractor agrees that Pond Creek may stop the work at any stage during its progress and terminate Contractor's employment there on upon ten (10) days' written notice. In case of such termination, Contractor shall receive, under the terms of this Agreement, payment for all expenditures made and obligations incurred which are chargeable as Cost of the Work; the fee for the portion of the work performed; and such amount as may be due Contractor for actual traveling and living costs of its main office and executive personnel.

#### ARTICLE VII.

**COOPERATION:** It is the intent of this Agreement that Pond Creek and Contractor shall cooperate, and use every effort to execute the work in a manner consistent with the interests of Pond Creek and in accordance with Pond Creek's requests and approvals.

#### ARTICLE VIII.

**COMPLIANCE WITH LAW:** Contractor shall comply with all local, state, Federal, or other public laws applicable to the work; provided, however, that Pond Creek shall obtain all permits which may be required in connection with the performance of this Agreement.

#### ARTICLE IX.

**LIENS:** In the event the Contractor allows any indebtedness to accumulate for labor and/or materials, which indebtedness has become or may become a lien upon the page 111 } property of Pond Creek, or which may become a claim against Pond Creek, Contractor, upon receipt of written request from Pond Creek, shall pay the same or cause the same to be dissolved, or discharged by giving a bond or otherwise, and in case Contractor fails so to do, Pond

Creek may withhold from any moneys due Contractor an amount sufficient to indemnify Pond Creek until such indebtedness is paid.

#### ARTICLE X.

**INSURANCE:** Contractor covenants that, during the progress of the work described herein, it will comply with the laws of Kentucky respecting Workmen's Compensation insurance; and will procure and maintain during the progress of the work Public Liability and Property Damage insurance satisfactory to Pond Creek and also such other insurance as may be required by Pond Creek. Prior to the commencement of work hereunder, Contractor will furnish proof to Pond Creek that it has complied with the above requirements.

Pond Creek shall carry and maintain during the progress of the work adequate Builders' Risk insurance with extended coverage, protecting the work and materials at the job site against loss, which insurance shall be for its benefit as well as for the benefit of the Contractor.

#### ARTICLE XI.

**INDEMNIFICATION:** Contractor shall indemnify and save harmless Pond Creek from and against all loss, damage, expense or liability for injury (including death) to persons or property that may occur or may be alleged to have occurred in the course of the performance of this Agreement by the Contractor; provided, however, that Contractor's liability hereunder shall not exceed the monetary limits of the Contractual Liability insurance Contractor is required to carry by Pond Creek.

#### ARTICLE XII.

**ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

#### ARTICLE XIII.

**COMPLETENESS OF AGREEMENT:** This Agreement constitutes the entire contract between the parties, and there are no understandings, representations or warranties of any kind not expressly set forth herein.

page 112 } IN WITNESS WHEREOF, the parties hereto  
have duly executed this Agreement, in duplicate,  
as of the day and year above written.

LABURNUM CONSTRUCTION CORPO-  
RATION

By /s/ A. HAMILTON BRYAN  
President

ATTEST:

/s/ HUBERT GRAVES

POND CREEK POCAHONTAS COM-  
PANY

By /s/ JAMES D. FRANCIS

ATTEST:

/s/ ROUSE  
Assistant Secretary

Approved  
/s/ R. D. C.  
Counsel

Approved

/s/ C. V. W.  
Real Est. Agt.

page 113 } STATEMENT OF COST OF WORK.

"Cost of Work" means:

All costs and expenses incurred by Contractor at the site of the work (subject to the approval of Pond Creek's representative) for the following items:

a. Wages (on both straight time and overtime basis) of mechanics and laborers at the site of the work, including salaries for supervision and accounting at the site of the work. All wage rates and salaries shall be subject to Pond Creek's prior approval.

b. Traveling expenses and traveling time, or either of them, paid to journeymen and apprentices when required by Union rules and regulations or when necessary to man the job prop-



erly; provided, however, this expense shall be subject to prior approval by Pond Creek.

c. Taxes assessed on reimbursable payrolls for Old Age Benefits and Unemployment insurance.

d. Assessments paid to the National Electrical Benefit Fund on gross wages paid to electrical workers on reimbursable payrolls and other like assessments which are in accordance with the rules and regulations of the local unions.

e. Work at the site sublet to others provided subletting shall have been with Pond Creek's approval.

f. Services furnished by others, provided such services shall have been rendered with Pond Creek's approval.

g. Rental of Contractor's tools and equipment while at the site of the work at rates mutually agreed upon, which rates shall not be in excess of Associated Equipment Distributors' rental rates; the cost of delivering same to the job site and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

h. Rental of tools and equipment rented from others specifically for use in connection with the work; the cost of delivering same to the site of the work and return transportation to the point of original shipment or to another point not further distant than the point of original shipment.

page 114 } i. Erection tools and equipment purchased specifically for the work, such items to become the property of Pond Creek upon delivery to the job site.

j. Cost of materials and supplies required for or in connection with the work and not furnished by Pond Creek, including sales or use taxes thereon, if any, and the cost of delivering same to the site of the work.

k. Premiums on Workmen's Compensation insurance, Public Liability insurance in the amount of \$100,000/\$300,000, Property Damage insurance in the amount of \$100,000, Payroll Robbery insurance and also premiums on any other insurance that Contractor is required by Pond Creek to carry at the site of the work.

l. All freight, trucking or other transportation charges in connection with bringing materials, supplies, tools, equipment or other items to the job site in connection with prosecution of the work.

m. Telegrams, long distance telephone calls, postage, office supplies and equipment and other similar expense incurred directly in connection with the work.

n. The cost of reconstructing and replacing any of the work destroyed or damaged not covered by insurance and not caused by failure on the part of the corporate officers or mem-

bers of the firm of Contractor, or its other representatives having supervision or direction of the operation of the work as a whole, to exercise good faith or the standard of care which they normally exercise in the conduct of the business of the Contractor, but expenditures under this paragraph must have written approval of Pond Creek in advance.

o. Any sales or use taxes imposed upon the Contractor by the State of Kentucky and resulting from the work covered by this contract.

p. All other items of cost and expense not expressly excluded by the provisions of this contract incurred by the Contractor directly in connection with the prosecution of the work at the job site; provided same shall be approved by Pond Creek.

Cost of the work shall not include the value of power, light, water or other facilities furnished by Pond Creek, nor the value of materials or supplies furnished by Pond Creek or rebates accruing to the Contractor on the purchase or return of equipment for the work, nor salaries or expenses of Contractor's home office, or employees regularly assigned thereto.

page 115 } SPECIFICATIONS FOR CONSTRUCTION OF  
APPROXIMATELY ELEVEN MILES OF  
TELEPHONE LINE FROM CARVER, KENTUCKY,  
TO CAMP NO. 1 NEAR POND CREEK POCA-  
HONTAS COMPANY'S KENTUCKY MINE NO. 1,  
BREATHITT COUNTY, KENTUCKY.

(1)—LOCATION: To be designated by Pond Creek Pocahontas Company's engineer and, in general, will begin at the Southern Bell Telephone & Telegraph Company's terminal near Carver, Kentucky. Telephone wire is to be strung on Buchanan Coal Company's telephone poles to a point near the Buchanan Coal Company's office; thence leaving said poles and extending in a southerly direction over lands owned by the Buchanan Coal Company to the top of the ridge at a point to be designated; thence continuing in a southerly direction along the road extending down Laurel Branch, on the eastern side of said branch; to the mouth of Laurel Branch; thence down Hawes Fork to its mouth; thence up Spring Fork, paralleling as nearly as possible the new road now under construction, to Pond Creek Pocahontas Company's No. 1 Camp, a distance of approximately eleven miles, more or less.

(2)—WIRE AND INSULATORS: Number 14 twisted pair, weather proof, copper wire is to be used. With the ex-

ception of that part of the line that is to be strung on the Buchanan Coal Company's poles, the wire is to be strung on trees, and is to be attached to the tree with No. 408 catalog No. 60 Heming Gray cable insulator; insulators to be attached to standard wooden pins. Wire is to be fastened to the insulator in such manner that movement of the tree by wind action will not break the wire. Wire is to be fastened to insulators at not less than 150 foot intervals, and where line crosses roadway, will be at least 30 feet above roadway. In general, line will not be placed closer than 25 feet from edge of roadway.

(3)—TEST STATIONS: Contractor will provide one or more test stations, as designated by Pond Creek Pocahontas Company. Test station will be located so as to be available to the roadway, and shall consist of a wooden box, weather proof, and secured with lock and key.

(4)—TELEPHONE EQUIPMENT AND INSTRUMENTS: Pond Creek Pocahontas Company will furnish necessary instruments, or may elect to authorize the contractor to furnish and install necessary instruments and equipment.

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#### CONTRACT.

THIS AGREEMENT, made and entered into this the 14th of December, 1948, by and between Construction Contractors, Builders and associations signatory hereto, hereinafter referred to as Operators, parties of the first part, and carpenter's Local Union No. 646, United Brotherhood of Carpenters and Joiners of America, on behalf of each member thereof, parties of the second part, and covering all the operations of said first parties, in the territory or jurisdiction of said Local Union No. 646.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set out in the agreement. It is agreed that the Local Carpenters Union No. 646, United Brotherhood of Carpenters and Joiners of America is recognized as the exclusive bargaining agency, representing the employees of the parties of the first part in the territory and in connection with work over which the parties of the second part have jurisdiction.

This agreement shall be effective, for duration of this job from and after the date of this agreement, the job being work

for Pond Creek Pocahontas Company in connection with a Coal Preparation Plant at its No. 1 Kentucky Mine, Breathitt County, Ky.

IT IS AGREED, that the following wage scale be established, as the prevailing wages to be paid under this contract, and the parties of the first part agree to pay wages, in accordance with the scale as set out in this contract, for all work performed by parties of the second part, as follows:

\$1.75 per hour for straight time, up to eight (8) Hours work performed in one day.

Time (1½) One half per hour for all time worked over Eight (8) Hours in any one day.

Time (1½) One Half per hour for all time worked on Saturdays.

Time (1½) One Half per hour for all time worked on Sundays or holidays.

HOLIDAYS, shall include the following named days, New Years days, 4th of July, Labor Day, Thanksgiving and Christmas day.

page 117 } This Agreement is made subject to any laws, State or Federal, which may be applicable thereto.

It is agreed that all disputes, grievances, and complaints, arising between the Operators and Employees, parties to this contract, shall be settled in accordance with the provisions and by-laws now in force and adopted by said Carpenters Union No. 646 U. B. of C. & J. OF A., of Paintsville, Ky.

Payments of wages earned, shall be made at the time or times as agreed on by the parties hereto.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to proper authority, has caused this Agreement, to be signed by its proper Officers or Representatives, on this the 14th day of December, 1948.

#### OPERATORS

LABURNUM CONSTRUCTION CORPORATION

By: /s/ A. HAMILTON BRYAN

President

/s/ S. B. RITTENHOUSE

**CARPENTERS:**

/s/ MONROE F. SUBLETT, R. S.  
Chairman

/s/ HOBART WELCH, Pres.  
Local Union No. 646  
United Brotherhood of Carpenters  
and Jointers of America.

By /s/ L. R. WARD, Fin. Sect.  
Business Agent

**SEAL**

Local Union No. 646  
Paintsville, Ky.  
United Brotherhood of Carpenters  
& Jointers of America

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\* \* \* \* \*

1950, Sept. 26. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

**FURTHER ANSWER OF LABURNUM CONSTRUCTION  
CORPORATION TO SUMMONS OF THE DEFEND-  
ANTS TO ANSWER INTERROGATORIES.**

For further answer to the summons directed by the Defendants to Plaintiff, Laburnum Construction Corporation, to answer certain interrogatories filed in the Clerk's Office of the Circuit Court of the City of Richmond, Plaintiff, Laburnum Construction Corporation, answers and says:

11. (a) Q. With respect to all persons who were employed by the Plaintiff in the performance of the contracts with Pond Creek Pocahontas Company and Spring Fork Development Company between the dates of July 10, 1949, and August 4, 1949, what are their names; what were their addresses on August 4, 1949; what are their present addresses; in what capacity and at what rate of pay were they employed by the Plaintiff?

A. In connection with performing the contracts with Pond Creek Pocahontas Company and Spring Fork Development Company, a statement showing the names and addresses of all persons employed by Plaintiff at the site of the work at any time between the dates July 10, 1949, and August 4, 1949, and further showing the capacities in which they were employed and their rates of pay is as follows:

<i>Superintendent</i>		<i>Rate of Pay</i>
C. M. Delinger, Richmond, Virginia		\$150.00 per wk.
Louis G. Veltry, Richmond, Virginia		150.00 per wk.
<i>Chief Clerk</i>		
Maynard C. Ragan, Richmond, Virginia		100.00 per wk.
<i>Ironworkers</i>		
Carl B. Rice, Oil Springs, Kentucky		2.25 per hr.
John W. McClellan, Van Lear, Ky.		2.25 per hr.
<i>Hoist Operator</i>		
D. T. Miller, Millboro, Virginia		2.15 per hr.
<i>Millwright Foreman</i>		
Harold Goad Princeton, West Virginia		2.25 per hr.
<i>Millwrights</i>		
Charles L. Bassham, Ragland, West Va.		2.00 per hr.
E. H. May, Leander, Kentucky		2.00 per hr.
Lowell H. May, Salyersville, Kentucky		2.00 per hr.
<i>Gen. Carpenter Foreman</i>		
Henry Starr, Paintsville, Kentucky . . . . .		2.25 per hr.
<i>Carpenter Foreman</i>		
Howard Williams, Benton, Kentucky		2.00 per hr.
Chalmers Patrick, Paintsville, Kentucky		2.00 per hr.
<i>Carpenter Layout Man</i>		
Thomas Green, Paintsville, Kentucky		2.00 per hr.
<i>Carpenters</i>		
Jack Patrick, Lowmansville, Kentucky		1.75 per hr.
M. F. Sublett, Paintsville, Kentucky		1.75 per hr.
Verner Conley, Riceville, Kentucky		1.75 per hr.
Harrison Daniels, Paintsville, Kentucky		1.75 per hr.

Lonnie Dixon, Nippa, Kentucky	1.75 per hr.
Alfred Dotson, Ivyton, Kentucky	1.75 per hr.

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M. M. Price, Salyersville, Kentucky	\$1.75 per hr.
Robert Poe, Ivyton, Kentucky	1.75 per hr.
Robert Hackworth, Riceville, Kentucky	1.75 per hr.
John E. Hackworth, Jr., Riceville, Ky.	1.75 per hr.
W. P. Wright, Riceville, Kentucky	1.75 per hr.
Otto Preston, West Van Lear, Kentucky	1.75 per hr.
Clarence Endicott, Paintsville, Ky.	1.75 per hr.
B. F. Pelphrey, Volga, Kentucky	1.75 per hr.
H. H. Hounsshell, Wilstacy, Kentucky	1.75 per hr.
Thomas Litteral, Riceville, Kentucky	1.75 per hr.
Roger H. Ray, Detroit, Michigan	1.75 per hr.
Charles Collett, Paintsville, Kentucky	1.75 per hr.
Thomas B. Arms, Staffordsville, Kentucky	1.75 per hr.
John T. Arnett, Arthurmable, Kentucky	1.75 per hr.
Tonie Wireman, Arthurmable, Kentucky	1.75 per hr.
Charles Marshall, Ivyton, Kentucky	1.75 per hr.
Norman Hackworth, Riceville, Kentucky	1.75 per hr.
Grant Davis, Thealka, Kentucky	1.75 per hr.
Homer Salyer, Royalton, Kentucky	1.75 per hr.
Harry J. Watson, Royalton, Kentucky	1.75 per hr.
LeGrand Mayo, Auxier, Kentucky	1.75 per hr.
Chester Trimble, Barnett's Creek, Ky.	1.75 per hr.
Bert E. Preston, Jr., West Van Lear, Ky.	1.75 per hr.
Estle Robinson, East Point, Kentucky	1.75 per hr.
P. L. Trimble, Barnett's Creek, Kentucky	1.75 per hr.
Lindon Higgins, Salyersville, Kentucky	1.75 per hr.
Edmond Dobbins, Gallup, Kentucky	1.75 per hr.
Leslie I. Myers, Hardin, Kentucky	1.75 per hr.
Wishard LeMasters, Salyersville, Ky.	1.75 per hr.

*Labor Foreman*

Lee Bach, Noctor, Kentucky	1.00 per hr.
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*Laborers*

Dan Combs, Decoy, Kentucky	.90 per hr.
Jerry Barnett, Noctor, Kentucky	.90 per hr.
Green Trusty, Decoy, Kentucky	.90 per hr.
Donald Trimble, Oil Springs, Kentucky	.90 per hr.
Matt Miller, Decoy, Kentucky	.90 per hr.
Green Stacy, Decoy, Kentucky	.90 per hr.
Green Conlev, Arthurmable, Kentucky	.90 per hr.
Burl King, Tip Top, Kentucky	.90 per hr.



Hargus H. Howard, Fredville, Kentucky	.90 per hr.
Avis Salyers, Arthurnable, Kentucky	.90 per hr.
Luther Litteral, Royalton, Kentucky	.90 per hr.
Ossie Lovely, Royalton, Kentucky	.90 per hr.
Earnest Howard, Swampton, Kentucky	.90 per hr.
John Jordan, Royalton, Kentucky	.90 per hr.
George P. Miller, Decoy, Kentucky	.90 per hr.
Homer Rowe, Tip Top, Kentucky	.90 per hr.

*Painter*

Walter S. Moore, Jr., Evanston, Kentucky	1.50 per hr.
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Most of the persons named above were employed by Plaintiff at the site of the work only a portion of the time between the dates July 10, 1949, and August 4, 1949.

page 121 } With reference to addresses, the above listed addresses are the only addresses which Plaintiff is able to furnish for the persons in question.

12. (a) Q. It is alleged on page 4 of the Notice of Motion for Judgment that "Said Hart and the mob of men headed by him were informed that workmen on said job were members of Local Unions affiliated with the American Federation of Labor or had made application to become members of such local unions". Who allegedly so informed Hart?

A. When Hart and his mob went to the coal tippie on July 26, 1949, they demanded that the employees of Plaintiff immediately become members of United Construction Workers, and said that such employees would not be permitted to continue their work unless they became members of United Construction Workers. Various employees of Plaintiff informed Hart and his mob that they were already members of Local Unions affiliated with the American Federation of Labor and showed Hart and his mob their Union cards signifying such membership. Some of the employees of Plaintiff had a heated discussion with Hart and his mob about the right of the latter to interfere with the employees of Plaintiff in their work and to demand that they join United Construction Workers. During this discussion Hart and his mob were informed that workmen of Plaintiff were members of Local Unions affiliated with the American Federation of Labor. Shortly

page 122 } thereafter on the same day, July 26, 1949, A. Hamilton Bryan, President of Plaintiff, met Hart and some of his mob at or near the job site. Bryan informed Hart and the persons with Hart that the employees of Plaintiff were members of Local Unions affiliated with the American Federation of Labor or had made application to become members of such Local Unions. Hart stated that the persons

employed by Plaintiff as laborers were not organized. Bryan then told Hart that all persons employed by Plaintiff as laborers has made application to join Salyersville, Kentucky, Carpenters' Local Union No. 697, American Federation of Labor, as Carpenter Helpers. Hart stated that this made no difference; that Plaintiff was working in United Mine Worker territory, and that they "were taking over", and that it would be necessary for Plaintiff to sign an agreement with United Construction Workers and to pay laborers at a rate of \$1.36 per hour and carpenters at a rate of \$1.86 per hour.

13. (a) Q. What is the name of the Kentucky State Police Officer to whom the Plaintiff allegedly appealed for assistance?

A. On July 27, 1949, at about 12:00 o'clock, noon, A. Hamilton Bryan, President of Plaintiff, and C. M. Delinger, Superintendent for Plaintiff, saw Homer Howard, a Kentucky State Policeman, in Salyersville, Kentucky. Delinger introduced Bryan to Howard. Bryan told Howard what had happened at the job site in Breathitt County the previous day and also that day, i. e., on July 26, and 27, 1949. Howard said he had heard about it. Bryan told Howard that some of the employees of Plaintiff were afraid that they might be shot by persons hiding in the mountains and using high powered rifles. Howard was asked if he thought there was any danger of this happening. Howard said that he was sure that there was such a danger. Howard was asked if he had ever seen any one shot that way, and he replied "I have not only seen them shot that way, but have picked them up after they were shot". Howard said that he had just gotten out of a hospital after being shot himself. He showed Bryan and Dilinger some of his scars from bullet wounds. Bryan asked Howard if he would go to the job site to preserve order in case of any trouble. Bryan said that the presence of Howard at the job would help the morale of the employees of the Plaintiff. Howard said that he would not go to the job site because he had orders not to take part in any labor dispute except on express instructions from the Governor of Kentucky.

20. (a) Q. What is each and every item comprising the Plaintiff's alleged damages of \$500,000.00?

A. With respect to the actual and punitive damages in the sum of \$500,000.00 claimed by Plaintiff, a statement showing the approximate amounts of the items comprising these damages is as follows:

Damage from loss of fee on contract for construction of 25 Dwellings	\$ 534.19
Damage from loss of fee on work in connection with construction of Schoolhouse	319.67
Damage from loss of fee in connection with work for installation of Asbestos Shingles on said 25 Dwellings	250.00
Damage from loss of fee in connection with work for installation of Concrete Foundations for Coal Preparation Plant for No. 2 (now called No. 3 Mine)	1,250.00
Damage from loss of fee on other additional work in Breathitt County, Kentucky, amounting to approximately \$542,500.00 which Pond Creek Pocahontas Company had agreed to have Laburnum Construction Corporation handle on a basis of cost-plus a fee of five (5) per cent	27,125.00
Damage by reason of the destruction of the business relationship and connection which Laburnum Construction Corporation had built up and developed with Pond Creek Pocahontas Company, Island Creek Coal Company and their associated and subsidiary companies	120,000.00
Damage to Plaintiff's reputation	100,000.00
Punitive damages	250,521.14
	<hr/> \$500,000.00 <hr/>

21. (a) Q. On July 13, 1949, which employees of the Plaintiff, requested in question (11), were employed in connection with the Pond Creek Pocahontas contract and which were employed in connection with the Spring Fork Development Company contract?

A. With respect to the contract with Pond Creek Pocahontas Company dated July 28, 1948, the following persons were employed by Plaintiff on July 13, 1949, in connection with the construction of the Coal Preparation Plant at No. 1 Kentucky Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky:

page 125 } John W. McClellan  
               D. T. Miller  
               Harold Goad  
               Charles L. Bassham

Lowell H. May  
Henry Starr  
Chalmers Patrick  
Thomas Greene  
E. H. May  
M. F. Sublett  
Verner Conley  
Alfred Dotson  
W. P. Wright  
Tonie Wireman  
Charles Marshall  
N. Hackworth  
Jack Patrick  
Lonnie Dixon  
M. M. Price  
Otto Preston  
Clarence Endicott  
Charles Collett  
John T. Arnett  
LeGrand Mayo  
Chester Trimble  
Bert E. Preston, Jr.  
Estle Robinson  
Paris Trimble  
Lee Bach  
Green Conley  
Jerry Barnett  
Luther Litteral  
Donald B. Trimble  
Avis Salvers  
Matt Miller  
Ossie Lovely  
Earnest Howard

With respect to the contract with Spring Fork Development Company, dated December 15, 1948, the following persons were employed by Plaintiff on July 13, 1949, in connection with the construction of 25 Dwellings on sites near the No. 1 Kentucky Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky:

Roger H. Ray  
Thomas Litteral  
J. E. Hackworth  
B. F. Pelphrey  
Thomas Arms

## Supreme Court of Appeals of Virginia.

Lindon Higgins  
 Homer Salyer  
 Harry J. Watson  
 Robert Hackworth (5 hrs.)  
 H. H. Hounshell (5 hrs.)  
 Howard Williams  
 Walter S. Moore, Jr.  
 page 126 } John Jordan  
                   Burl King  
                   George P. Miller

On July 13, 1949, the Plaintiff employed the following persons in connection with the construction of a Schoolhouse near said No. 1 Kentucky Mine:

Robert Hackworth (3 hrs.)  
 H. H. Hounshell (3 hrs.)  
 Dan Combs  
 Green Trusty  
 Hargus Howard  
 Green Stacy

On July 13, 1949, C. M. Delinger, Superintendent, and Maynard C. Ragan, Chief Clerk, were also employed by the Plaintiff on the work in Breathitt County, Kentucky. The services of these two employees related to all of the work mentioned above.

## LABURNUM CONSTRUCTION CORPORATION

By A. HAMILTON BRYAN, Pres.

page 127 } State of Virginia,  
                   City of Richmond, to-wit:

This day A. Hamilton Bryan personally appeared before me, Mamie M. Anderson, a Notary Public in and for the City and State aforesaid in my City aforesaid and made oath that he is President and agent of Laburnum Construction Corporation and as such he is authorized to make this affidavit, and the said A. Hamilton Bryan further made oath that the matters and things stated in the foregoing Further Answer of Laburnum Construction Corporation to Summons of the Defendants to Answer Interrogatories are in all respects true and correct to the best of his information, knowledge and belief.

Given under my hand this 26th day of September, 1950.  
My commission expires August 8, 1953.

MAMIE M. ANDERSON,  
Notary Public

page 128 }

. . . . .

This day came the plaintiff by counsel and came also the defendants by counsel and the plaintiff filed further answer to interrogatories heretofore filed in this action by the defendants; and the plaintiff likewise filed further interrogatories addressed to these defendants.

Upon consideration whereof, the Court doth order that the defendants file their grounds of defense herein on or before October 16, 1950 and that they file their answer to all interrogatories filed in this action by the plaintiff, which the Court has heretofore ordered the defendants to answer, or which the Court may hereafter order the defendants to answer on or before the 15th day of November, 1950.

Enter.

HAROLD F. SNEAD  
Judge.

9/26/50.

. . . . .

page 129 }

. . . . .

Received & Filed Oct. 2, 1950.

Teste:

WILBUR J. GRIGGS, Clerk  
By LUTHER C. MONTGOMERY, D. C.

**FURTHER ANSWER OF LABURNUM CONSTRUCTION  
CORPORATION TO SUMMONS OF THE DEFEND-  
ANTS TO ANSWER INTERROGATORIES**

For further answer to the summons directed by the Defendants to Plaintiff, Laburnum Construction Corporation,

## Supreme Court of Appeals of Virginia.

to answer certain interrogatories filed in the Clerk's Office of the Circuit Court of the City of Richmond, Plaintiff, Laburnum Construction Corporation, answers and says:

18. (a) Q. What was the total dollar volume of work performed by the Plaintiff in the State of Kentucky in 1949 and in each of the five years next preceding 1949?

A. The total dollar volume of work performed by Plaintiff in the State of Kentucky in 1949 and in each of the five years next preceding 1949 was as follows:

1944	None
1945	None
1946	None
1947	None
1948	\$ 33,827.88
1949	278,053.01
	<hr/>
Total	\$311,880.89
	<hr/>

page 130 } 18. (b) Q. Furnish same for Virginia and West Virginia. The Court has ruled Plaintiff need not furnish the information requested so far as the State of Virginia is concerned.

A. The total dollar volume of work performed by Plaintiff in the State of West Virginia in 1949 and in each of the five years next preceding 1949 was as follows:

1944	\$314,078.97
1945	None
1946	None
1947	62,511.11
1948	121,306.78
1949	174,838.92
	<hr/>
Total	\$672,735.78
	<hr/>

With reference to the work in 1944 amounting to \$314,078.97, this work was performed by Laburnum Construction Corporation and Riggs Distler & Company, Inc., as joint venturers.

LABURNUM CONSTRUCTION CORPORATION

By A. HAMILTON BRYAN, President.



I certify that copies of the foregoing further answer of Laburnum Construction Corporation to summons of the defendants to answer interrogatories were delivered to Messrs. Williams, Mullen and Hazelgrove, counsel for all defendants, on or about Sept. 28, 1950, and that prior to October 2nd, 1950, said counsel for all defendants, verbally acknowledged receipt of said further answer.

ARCHIBALD G. ROBERTSON  
of Counsel for plaintiff.

October 2nd, 1950.

page 131 } State of Virginia:  
City of Richmond, to-wit:

This day A. Hamilton Bryan personally appeared before me, Phyllis C. Burkey, a Notary Public in and for the City and State aforesaid in my City aforesaid and made oath that he is President and agent of Laburnum Construction Corporation and as such he is authorized to make this affidavit, and the said A. Hamilton Bryan further made oath that the matters and things stated in the foregoing Further Answer of Laburnum Construction Corporation to Summons of the Defendants to Answer Interrogatories are in all respects true and correct to the best of his information, knowledge and belief.

Given under my hand this 27th day of September, 1950.  
My commission expires August 31, 1951.

PHYLLIS C. BURKEY  
Notary Public.

page 132 }

. . . . .

Received and Filed Oct. 12, 1950.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

GROUND OF OBJECTION TO INTERROGATORIES  
ADDRESSED TO UNITED MINE WORKERS OF  
AMERICA BY THE COMPLAINANT.

(1) The interrogatories as a whole and in special categories violate the Fourth Amendment to the Constitution of the

United States, and the Statutes of Virginia, and are contrary to the decisions of the United States Supreme Court in that they constitute a fishing expedition and impose an impossible task on the defendant.

(2) A large percentage of the questions asked are irrelevant and immaterial, and the periods for which information is asked is likewise irrelevant and immaterial.

(3) That the extensive duplication of questions imposes an undue burden on the defendant.

(4) That a large percentage of questions call for interpretation of written instruments and is an invasion of the functions of the court.

page 133 } (5) That the answers to certain categories of questions are known to, or information necessary to answer same is in the possession of, complainant.

(6) That certain categories are specifically intended to create prejudice and the interrogatories as a whole are directed to creating prejudice and to confuse the jury.

page 134 }

\* \* \* \* \*

Received & Filed Oct. 16, 1950.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

### GROUNDS OF DEFENSE.

#### *First Defense.*

(1) The defendants deny the allegations contained in the second unnumbered paragraph beginning on the first page of the Notice of Motion for Judgment

(2) With respect to the unnumbered paragraph beginning on page 2 of the Notice of Motion for Judgment, the defendants deny that William O. Hart was, or is, an officer of United Construction Workers, affiliated with United Mine Workers of America. Defendants deny that William O. Hart said Mr. David Hunter was an officer of District 50 United Mine Workers of America, and deny that David Hunter was such an officer. The defendants deny that William O. Hart stated to the agent of the plaintiff over the telephone that he "understood that Pond Creek Pocahontas Company intended to

award to the plaintiff considerable additional  
 page 134 } work in Breathitt County, Kentucky, which would  
 include, among other things, approximately 500  
 dwellings, stores and other buildings." The defendants deny  
 that William O. Hart stated "that the territory in which this  
 work was being performed was the territory of the United  
 Construction Workers." The defendants deny that William  
 O. Hart stated "that he intended 'to take over' all of the  
 plaintiff's work for the Pond Creek Pocahontas Company  
 in Breathitt County, Kentucky." The defendants deny that  
 William O. Hart stated "that the United Construction  
 Workers had closed down a job of Beckett Construction Com-  
 pany at Wheelwright, Kentucky." The defendants deny  
 that William O. Hart stated that "and unless the plaintiff  
 agreed to recognize immediately United Construction Work-  
 ers as the sole bargaining agent for the employees of plain-  
 tiff on said projects in Breathitt County, Kentucky, that he,  
 William O. Hart, as Field Representative and an officer of  
 United Construction Workers, District 50, would close down  
 the work of plaintiff in Breathitt County, Kentucky."

(3) With respect to the unnumbered paragraph beginning  
 on page 3 of the Notice of Motion for Judgment, the defend-  
 ants deny that "the superintendent in charge of the works  
 of the plaintiff in Breathitt County, Kentucky, learned that  
 the said William O. Hart had arranged to bring a large group  
 of men to the job site of the plaintiff in Breathitt County,  
 Kentucky, at about noon on the following day, 'July 26,  
 1949' ' for the purpose of forcibly stopping the work of plain-  
 tiff on said job," and defendants deny that William O. Hart  
 had arranged to bring a large group of men to the  
 page 136 } job site of the plaintiff in Breathitt County, Ken-  
 tucky, at about noon on the following day, July  
 26, 1949, or at any other time for the purpose of forcibly  
 stopping the work of the plaintiff on said job. The defend-  
 ants deny that "the said superintendent was also informed  
 that the said group of men with said Hart would be armed,"  
 and deny that it was ever intended that the said group of men  
 with said Hart would be armed and they deny that they were,  
 in fact, ever armed. Defendants deny there were any threats.  
 The defendants deny that the group of men accompanying  
 William O. Hart constituted a mob and the defendants deny  
 that the group of men accompanying William O. Hart num-  
 bered as many as 75 men. The defendants deny that William  
 O. Hart acted as an officer of United Construction Workers,  
 or District 50, or as a Field Representative of District 50.  
 The defendants deny that the plaintiff inquired of said Hart  
 as to his authority to interfere with and prevent plaintiff

from continuing its work. The defendants deny that said Hart said "he was acting under the orders of Tom (Thomas) Rainey and that he was carrying out Rainey's orders." The defendants deny that said Tom (Thomas) Rainey "is authorized to give orders for and on behalf of United Mine Workers of America to said District 50 and United Construction Workers, and the said Hart." The defendants again deny that the group of men accompanying Hart constituted a mob and they deny that such persons harangued workmen employed by the plaintiff with threats and abuses, and they deny that these persons then demanded that workmen employed by plaintiff immediately became members of United Construction Workers. The defendants deny that said Hart used violent language to workmen employed by the plaintiff. The defendants deny that Hart said "to these men that they would not be permitted to continue their work unless  
page 137 } they became members of United Construction Workers." The defendants again deny that the group of men accompanying Hart constituted a mob and they deny that such persons were informed that "workmen on said job were members of local unions affiliated with American Federation of Labor, or had made application to become members of such local unions." The defendants deny that "the employees on the job promptly refused to become members of said United Construction Workers, and defendants again deny that the group of men accompanying William O. Hart constituted a mob. The defendants deny that William O. Hart was ever an officer of United Construction Workers, or of District 50, or that he acted as a Field Representative of District 50. The defendants deny that the group of men accompanied by William O. Hart "swarmed around most of the laborers on said job and demanded that these laborers sign application blanks to become members of United Construction Workers." The defendants deny that any of the laborers on said job "signed application blanks to become members of United Construction Workers under duress since they feared they would be injured or killed by the persons accompanying Hart if they refused to sign such cards." The defendants deny that the persons accompanying William O. Hart constituted a mob, and the defendants deny that any of the persons accompanying said Hart had been drinking or were intoxicated, or seemingly intoxicated, or were carrying pistols or guns. The defendants deny that any employees saw the outline of pistol handles or bullet cylinders concealed under the shirts of, or in the pockets of some of the men  
page 138 } accompanying said Hart, and that the group of men accompanying said Hart constituted a mob;

and that pistol shots were heard while the group of men accompanied by Hart were approaching the said coal tippie. The defendants deny that the group of men accompanying said Hart constituted a mob. The defendants deny that Hart violently addressed a group of plaintiff's employees. The defendants deny that "said Hart then again emphatically and violently affirmed that he and his mob had come to the job for the purpose of stopping the plaintiff's men from working unless they joined United Construction Workers." The defendants deny that "the said Hart further stated that excepting some few laborers, plaintiff's employees had refused to join United Construction Workers and that the employees who had not joined his (Harts) union would not be permitted to work." The defendants deny that the group of men accompanying Hart constituted a mob. The defendants deny that Hart stated "that he and his mob were establishing a picket line and that they were prepared to use all force necessary to hold the picket line and prevent the employees of plaintiff from working" and again deny there was a mob. The defendants deny that "the said Hart further stated that the United Construction Workers intended to see that the plaintiff's men did not work and that if anyone did not believe this, he, the said Hart, would bring to the job 300 tough men from Beaver Creek, Kentucky, and that these men would come 'rough' and that they would kick the plaintiff's men off the job." The defendants deny that the group of men accompanying William O. Hart constituted a mob. The defendants deny the last sentence of this paragraph.

page 139 } (4) With respect to the first unnumbered paragraph on page 6 of the Notice of Motion for Judgment the defendants deny all of the allegations contained in such paragraph.

(5) With respect to the second unnumbered paragraph beginning on page 6 of the Notice of Motion for Judgment, the defendants deny that on or about July 27, 1949, many of the employees of the plaintiff returned to their work. The defendants deny that on or about July 27, 1949, United Construction Workers had any "spotters". The defendants deny that H. G. Robinson represented himself to be an officer of United Construction Workers. The defendants deny that the employees of the plaintiff "refused to return to work for the reason that the men had been informed in the event they undertook to work more than 100 United Construction Workers would come upon the job and force them to stop and that possibly something might happen to them if they returned to work on the tippie." The defendants deny that anything might have happened to them if they returned to work on the

tipple. The defendants deny that "It was also rumored that certain of the mob were hiding in the hills with rifles and would shoot any of the men who might return to work." The defendants deny that "shortly thereafter, all of the employees of the plaintiff left the said work because of said threats and rumors and have not since returned to their work. The plaintiff in the meantime had appealed to a Kentucky State Police Officer for assistance, but had received no adequate assistance to maintain law and order upon the said works. The Kentucky State Police Officer knew of the disturbance page 140 } but stated that he had orders not to take part in any such disturbance. The said state policeman stated that he was convinced there was real danger to the men should they return to their work, and further stated that "I have not only seen them shot that way, but have picked them up after they were shot." The defendants deny that approximately 250 persons attended a meeting of the United Construction Workers on or about August 1, 1949, at a place known as "Tiptop". The defendants deny "the said Mr. William O. Hart at that meeting again insisted upon preventing the plaintiff from proceeding with its work under said contracts in Breathitt County, Kentucky." The defendants deny the allegations contained in the last two sentences of this paragraph.

(6) With respect to the unnumbered paragraph beginning on page 8 of the Notice of Motion for Judgment the defendants deny all of the allegations in such paragraph through the allegation "he then threatened the men with bodily harm if they attempted to go to work." The defendants deny that Mr. Davis said "he was very sympathetic with people in plaintiff's position, but that it was caught between two big unions and he would not, although urgently requested so to do by plaintiff, direct the said Mr. Hunter, or the said Hart not to disturb or interfere with the employees of the plaintiff." The defendants deny that Hart agreed to attend on August 2, 1949, at 10:00 o'clock A. M., a meeting upon condition that the plaintiff would not attempt to perform any work until said meeting. The defendants deny all of the remaining allegations in this paragraph beginning on page 9 of the Notice of Motion for Judgment with the sentence page 141 } "One of the representatives of the American Federation of Labor asked the question "Do you want to wait until somebody is killed before you do something?"', except the statement "While the meeting was in progress, the representatives of American Federation of Labor refused to meet with the said Hart."



(7) With respect to the first unnumbered paragraph beginning on page 10 of the Notice of Motion for Judgment, the defendants deny that Exhibits "B" and "C" said that the contracts were cancelled "because of plaintiff's inability to proceed with said work."

(8) With respect to the second unnumbered paragraph beginning on page 10 of the Notice of Motion for Judgment, defendants deny the statement "between the international conventions, the supreme executive and judicial powers of the United Mine Workers of America shall be vested in its Executive Officers and the Executive Board" is a complete statement of the terms of the Constitution, and say it leaves off the words "in accordance with and subject to the provisions of this Constitution."

(9) With respect to the unnumbered paragraph beginning on page 12, defendants deny that the Rules of District 50 provide that sub-districts may be set up by said District 50. They deny that District 50 has caused to be set up a number of sub-districts among which is the United Construction Workers. These defendants deny that United Construction Workers were organized by and pursuant to the direction and control of District 50. Defendants deny that the by-laws page 142 } or rules adopted by United Construction Workers must not be inconsistent with the rules and by-laws of District 50. They deny that "a portion of said dues after payment to United Construction Workers is transferred to District 50 and to United Mine Workers of America."

(10) With respect to the first unnumbered paragraph beginning on page 13, defendants deny that David Hunter or William O. Hart was, or is, a duly authorized representative of United Mine Workers of America. These defendants deny that "The said United Construction Workers is and was at all times hereinbefore mentioned, the agent of United Mine Workers of America, and of said District 50, and all of the acts of said William O. Hart and his mob, and the acts of the said United Construction Workers in and about their efforts unlawfully and maliciously to prevent the plaintiff from continuing its work in Breathitt County, Kentucky, were duly authorized, ratified and confirmed by said United Construction Workers, by said District 50, and by said United Mine Workers of America as their own acts jointly and severally," and again deny that the group of men accompanying William O. Hart constituted a mob.

(11) With respect to the last unnumbered paragraph beginning on page 13, these defendants deny that an officer of United Construction Workers is domiciled and has his office



in the said City of Richmond, and also deny that an officer of District 50 is domiciled and has his office in the City of Richmond.

(12) With respect to the unnumbered paragraph beginning on page 14, the defendants admit that William page 143 } O. Hart, David Hunter and Thomas Davis were agents of United Construction Workers and of District 50. The defendants deny all other allegations contained in this paragraph.

*Second Defense.*

The supposed cause of action arose in Kentucky and the substantive law governing the case is the law of Kentucky. The provisions of the Kentucky Revised Statutes of 1948 (4th Biennial Edition) §336.130 give the right to strike, the right to engage in peaceful picketing, and the right to assemble collectively for peaceful purposes.

*Third Defense.*

The plaintiff did not suffer any injuries or damages.

*Fourth Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they are the result of peaceful picketing in the course of a lawful strike in a labor dispute.

*Fifth Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they are uncertain, remote, speculative, and contingent.

*Sixth Defense.*

The plaintiff is not entitled to any punitive damages for the reason that under the law of Kentucky no defendant and no person for whose conduct the defendants, or any page 144 } of them, are legally responsible, has been guilty of wantonness, oppressiveness, recklessness, or of such malice as implies a spirit of mischief or gross indifference to the welfare or civil rights of others.

*Seventh Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they were not caused by the defendants or persons for whose conduct the defendants, or any of them, are legally responsible

*Eighth Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they are the result of the exercise by the defendants, and the persons for whom they are legally responsible, of their rights under the First Amendment to the Constitution of the United States.

UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA; DISTRICT  
50 UNITED MINE WORKERS OF  
AMERICA; AND U N I T E D MINE  
WORKERS OF AMERICA, Defendants.  
By Counsel.

WILLIAMS, MULLEN & HAZELGROVE  
By FRED G. POLLARD  
Counsel.

CRAMPTON HARRIS  
1018-1019 First National Building  
Birmingham, Alabama.  
Counsel.

. . . . .

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. . . . .

1950, Oct. 24th. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

FURTHER INTERROGATORIES ADDRESSED TO  
UNITED CONSTRUCTION WORKERS, AFFILI-  
ATED WITH UNITED MINE WORKERS OF  
AMERICA.

SPECIFIC QUESTIONS OBJECTED TO BY THE DE-  
FENDANT, UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE WORKERS OF  
AMERICA, AND GROUNDS OF OBJECTION.

THE NUMBERS REFER TO THE NUMBERED QUES-  
TIONS IN THE INTERROGATORIES REFERRED  
TO, WHICH WERE FILED IN COURT AND SERVED  
ON DEFENDANT ON OCTOBER 12, 1950.

(5) Defendant objects to this interrogatory on the follow-  
ing grounds:

(a) Said interrogatory calls for testimony that is imma-  
terial, irrelevant and incompetent.

(b) Said interrogatory calls for testimony relative to trans-  
actions *res inter alios acta*.

(c) Said interrogatory calls for testimony that would  
throw no light on the issues in this case.

(d) The matters inquired about in this interrogatory rela-  
tive to Thomas Raney would shed no light on the actions or  
statements of Thomas Raney in connection with any business  
or claims of the plaintiff, Laburnum Construction Corpora-  
tion.

(e) Said interrogatory calls for testimony which would only  
serve to confuse the jury.

page 158 } (f) Said interrogatory is propounded with the  
purpose of creating prejudice against the de-  
fendant.

\* \* \* \* \*

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\* \* \* \* \*

1950, Oct. 24th. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

FURTHER INTERROGATORIES ADDRESSED TO DISTRICT 50, UNITED MINE WORKERS OF AMERICA.

SPECIFIC QUESTIONS OBJECTED TO BY THE DEFENDANT, DISTRICT 50, UNITED MINE WORKERS OF AMERICA, AND GROUNDS OF OBJECTION.

THE NUMBERS REFER TO THE NUMBERED QUESTIONS IN THE INTERROGATORIES REFERRED TO, WHICH WERE FILED IN COURT AND SERVED ON DEFENDANT ON OCTOBER 12, 1950.

(5) Defendant objects to this interrogatory on the following grounds:

(a) Said interrogatory calls for testimony that is immaterial, irrelevant and incompetent.

(b) Said interrogatory calls for testimony relative to transactions *res inter alios acta*.

(c) Said interrogatory calls for testimony that would throw no light on the issues in this case.

(d) The matters inquired about in this interrogatory relative to Thomas Raney would shed no light on the actions or statements of Thomas Raney in connection with any business or claims of the plaintiff, Laburnum Construction Corporation.

(e) Said interrogatory calls for testimony which would only serve to confuse the jury.

page 160 } (f) Said interrogatory is propounded with the purpose of creating prejudice against this defendant.

. . . . .

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. . . . .

1950, Oct. 24th. Received and filed.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

FURTHER INTERROGATORIES ADDRESSED TO  
UNITED MINE WORKERS OF AMERICA.

SPECIFIC QUESTIONS OBJECTED TO BY THE DE-  
FENDANT, UNITED MINE WORKERS OF AMERICA,  
AND GROUNDS OF OBJECTION.

THE NUMBERS REFER TO THE NUMBERED QUES-  
TIONS IN THE INTERROGATORIES REFERRED  
TO, WHICH WERE FILED IN COURT AND SERVED  
ON DEFENDANT ON OCTOBER 12, 1950.

(5) Defendant objects to this interrogatory on the follow-  
ing grounds:

(a) Said interrogatory calls for testimony that is imma-  
terial, irrelevant and incompetent.

(b) Said interrogatory calls for testimony relative to trans-  
actions *res inter alios acta*.

(c) Said interrogatory calls for testimony that would  
throw no light on the issues in this case.

(d) The matters inquired about in this interrogatory rela-  
tive to Thomas Raney would shed no light on the actions or  
statements of Thomas Raney in connection with any busi-  
ness or claims of the plaintiff, Laburnum Construction Cor-  
poration.

(e) Said interrogatory calls for testimony which would  
only serve to confuse the jury.

page 162 } (f) Said interrogatory is propounded with the  
purpose of creating prejudice against this defend-  
ant.

(6) Defendant objects to answering this question, and for  
grounds of objection assigns the following:

(a) Said interrogatory calls for testimony that is irrele-  
vant, immaterial and incompetent.

(b) Said interrogatory calls for thirty-eight different is-  
sues of the publication United Mine Workers Journal, and  
the answer thereto would serve to confuse the jury.

(c) Said interrogatory is designed to prejudice the jury  
against this defendant for the reason that the issues of the  
United Mine Workers Journal contain various and sundry  
expressions of opinion and discussions of economic, social  
and political questions which would tend to arouse debates  
and disagreements on the part of the members of the jury  
who hold opinions contrary to the opinions expressed or posi-

tion taken in said Journal, and would arouse the feelings of such jurors against the defendant

(d) Said interrogatory calls for testimony that would unduly burden the record in this case.

(f) The requirements of Section 8-324, Code of Virginia 1950, as amended, have not been met with respect to this interrogatory.

. . . . .

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**AMENDED MOTION TO CONSOLIDATE.**

United Construction Workers, by Counsel, moves the Court to consolidate the captioned cases and respectfully requests that they be tried together at the same time.

**UNITED CONSTRUCTION WORKERS**  
By Counsel.

**WILLIAMS, MULLEN & HAZELGROVE,**  
1001 E. Main Street,  
Richmond, Virginia.

**FRED G. POLLARD**  
Counsel

November 8, 1950:

I have this day mailed a copy of this motion to Geo. E. Allen.

**FRED G. POLLARD**

1950, Nov. 8th. Received and Filed.

Teste:

**WILBUR J. GRIGGS, Clerk**  
By **E. M. EDWARDS, D. C.**

. . . . .

page 177 } Virginia:

In the Circuit Court of the City of Richmond.

Nov. 28, 1950

. . . . .

### ORDER ON INTERROGATORIES.

On June 19, 1950, defendants filed interrogatories addressed to plaintiff, and on June 19, 1950, summons was issued and served calling upon plaintiff to answer said interrogatories on July 10, 1950; but by order entered on July 7, 1950, the time for answering said interrogatories was extended until September 20, 1950, said interrogatories being now designated "Interrogatories (1)".

On August 25, 1950, plaintiff filed interrogatories addressed to defendant, United Construction Workers, Affiliated With United Mine Workers of America, and summons issued on August 25, 1950, was served upon said defendant on August 28, 1950, calling upon said defendant to answer said interrogatories on September 20, 1950; said interrogatories being now designated "Interrogatories (2)".

On August 29, 1950, plaintiff filed interrogatories addressed to defendant, District 50, United Mine Workers of America, and summons issued on August 29, 1950, was served upon said defendant on August 30, 1950, calling upon said page 178 } defendant to answer said interrogatories on September 20, 1950; said interrogatories being now designated "Interrogatories (3)".

On September 13, 1950, plaintiff filed interrogatories addressed to defendant, United Mine Workers of America, and summons issued on September 13, 1950, was served upon said defendant on September 14, 1950, calling upon said defendant to answer said interrogatories on September 20, 1950; said interrogatories being now designated "Interrogatories (4)".

On September 20, 1950, all parties came by counsel, and plaintiff filed its answer to Interrogatories (1), said answer being now designated "Answer of Laburnum Construction Corporation to Summons of the Defendants to Answer Interrogatories (1)", and plaintiff answered questions in Interrogatories (1) numbered 1 through 10, both inclusive, 14 and 22; but except under order of court plaintiff declined to answer questions numbered 11 through 13, both inclusive, and 15 through 21, both inclusive, in said Interrogatories (1).



Thereupon Interrogatories (1) were argued by counsel and the court ruled as follows:

(1) Plaintiff must answer questions numbered 11, 13, 20 and 21 in Interrogatories (1);

(2) Plaintiff need not answer questions numbered 12, 15, 16, 17 and 19 in Interrogatories (1); and

(3) Plaintiff need not answer question 18 as framed in Interrogatories (1), but must answer question 18 in Interrogatories (1) re-framed as follows:

(18) What was the total dollar volume of work performed by the Plaintiff in the State of Kentucky in 1949 and in each of the five years next preceding 1949? Furnish same for West Virginia.

On September 20, 1950, the court deferred all rulings upon the admissibility in evidence of all answers to Interrogatories until trial of the action.

page 179 } On September 20, 1950, none of the defendants answered any interrogatories, and the court deferred argument and rulings upon Interrogatories (2), Interrogatories (3) and Interrogatories (4) until September 26, 1950.

On September 26, 1950, after argument by counsel upon Interrogatories (2) and Interrogatories (3) the court ruled that on or before November 15, 1950, defendant, United Construction Workers, Affiliated with United Mine Workers of America,

(1) Must answer the questions in Interrogatories (2) numbered 1 through 14, both inclusive, 17 through 77, both inclusive, 82, 83 and 92 through 94, both inclusive;

(2) Need not answer questions numbered 15, 16, 78, 79, 80, 81, 87, 88 and 89 in Interrogatories (2) as framed, but that said defendant must answer questions 15, 16, 78, 79, 80, 81, 87, 88 and 89 re-framed as follows:

15. Who are the persons who served as directors of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what other offices has each director of Region 58 held between the dates October 28, 1948, and August 4, 1949; when and by whom was each director appointed a Regional Director or other officer; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each director of Region 58 serve in

that office or in any other office; and what were the locations of their respective offices?

16. Who are the persons who have served as directors of Region 58 of United Construction Workers since August 4, 1949, and what other offices has each director of Region 58 held since August 4, 1949; when and by whom was each director appointed a Regional Director or other officer; during what period or periods since August 4, 1949, did each director of Region 58 serve in that office or in any other office; and what were the locations of their respective offices?

78. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of United Construction Workers were submitted by United Construction Workers or by its National Director or National Comptroller to District 50 or to the Administrative Officer or Secretary-Treasurer of District 50 between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

79. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of United Construction Workers were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer to United Construction Workers or to the National Director or National Comptroller of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

80. What written instructions, statements, reports, memoranda, letters and other papers, pertaining to Region 58 of United Construction Workers were submitted by the United Construction Workers or by its National Director or National Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

81. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of United Construction Workers were submitted by United Mine Workers of America or by the International Executive Board or the President or any other International Officer of United Mine Workers of America to United Construction Workers or to the National Director or National Comptroller of United

Construction Workers between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

87. Were charter fees, initiation fees and dues paid to United Construction Workers by its Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and was any portion of such fees and dues paid by United Construction Workers to District 50 or to United Mine Workers of America; and, if so, why?

88. State the following for the years 1948 and 1949 each:

(a) Were funds advanced or paid by United Construction Workers to or for the account of District 50 or United Mine Workers of America; and, if so, why?  
 page 181 } (b) Were funds advanced or paid by District 50 or United Mine Workers of America to or for the account of United Construction Workers; and, if so, why?

89. Has United Mine Workers of America or District 50 during the years 1948 or 1949 guaranteed payment of any debt or obligations of United Construction Workers or acted as endorser on any notes or bonds of United Construction Workers; and, if so, why?

(3) Need not answer questions numbered 90 and 91 in Interrogatories (2).

(4) Need not answer questions 84, 85 and 86, but that questions 84 and 85 must be answered by defendant, United Mine Workers of America, and that question 86 must be answered by defendant, District 50, United Mine Workers of America.

On September 26, 1950, plaintiff filed its first further answer to Interrogatories (1), said further answer being now designated "First Further Answer of Laburnum Construction Corporation to Summons of Defendants to Answer Interrogatories (1)". On September 26, 1950, after argument by counsel, the court ruled that on or before November 15, 1950, defendant, District 50, United Mine Workers of America,

(1) Must answer the questions in Interrogatories (3) numbered 1 through 13, both inclusive, 16 through 53, both inclusive, 55 through 80, both inclusive, 85, 88, 94, 95 and 96.

(2) Need not answer questions 14, 15, 54, 81, 82, 83, 84, 89, 90 and 91 as framed, but that said defendant must answer questions 14, 15, 54, 81, 82, 83, 84, 89, 90 and 91 re-framed as follows:

14. Who are the persons who served as directors of Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what other offices has each director of Region 58 held between the dates October 28, 1948, and August 4, 1949 and when and by whom was each such person appointed Regional Director or other officer; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as Regional Director or other officer; and what were the locations of their respective offices?

15. Who are the persons who have served as directors of Region 58 of District 50 since August 4, 1949, and what other offices has each director of Region 58 held since August 4, 1949; and when and by whom was each such person appointed Regional Director or other officer; during what  
page 182 } period or periods since August 4, 1949, did each serve as Regional Director or other officer; and what were the locations of their respective offices?

54. What work, occupations and industries were claimed by District 50 to be within its jurisdiction between the dates October 28, 1948, and August 4, 1949; and what work, occupations and industries have been claimed by District 50 to be within its jurisdiction since August 4, 1949?

81. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50, or to Region 58 of United Construction Workers, were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer or Comptroller to United Construction Workers or to the National Director or National Comptroller of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, Statements, reports, memoranda, letters and other papers.

82. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50, or to Region 58 of United Construction Workers, were submitted by United Construction Workers or by its National Director or National Comptroller to District 50 or to the Administrative Officer or Secretary-Treasurer or Comptroller of District 50 between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

83. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50, or to Region 58 of United Construction Workers, were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer or Comptroller to United Mine Work-

ers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

84. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50, or to Region 58 of United Construction Workers, were submitted by United Mine Workers of America or by the International Executive Board or the President or any other International Officer of United Mine Workers of America to District 50 or to the Administrative Office or Secretary-Treasurer or Comptroller of District 50 between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

89. Were charter fees, initiation fees and dues paid to District 50 by its Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and was any portion of such fees and dues paid by District 50 to United Construction Workers or to United Mine Workers of America; and, if so, why?

90. State the following for the years 1948 and page 183 } 1949 each:

(a) Were funds advanced or paid by District 50 to or for the account of United Construction Workers or United Mine Workers of America; and, if so, why?

(b) Were funds advanced or paid by United Construction Workers or United Mine Workers of America to or for the account of District 50; and, if so, why?

91. Has United Mine Workers of America or United Construction Workers during the years 1948 or 1949 guaranteed payment of any debts or obligations of District 50, or acted as endorser on any notes or bonds of District 50; and, if so, why?

(3) Need not answer questions 86 and 87, but that questions 86 and 87 must be answered by defendant, United Mine Workers of America.

(4) Need not answer questions 92 and 93.

On September 26, 1950, the court deferred argument and rulings upon Interrogatories (4) until October 12, 1950.

On September 26, 1950, plaintiff submitted to the court and

to counsel for defendants further interrogatories addressed respectively to defendant, United Construction Workers, Affiliated with United Mine Workers of America, said interrogatories being now designated "Further Interrogatories (5)"; further interrogatories addressed to defendant, District 50, United Mine Workers of America, said interrogatories being now designated "Further Interrogatories (6)"; and further interrogatories addressed to defendant, United Mine Workers of America, said interrogatories being now designated "Further Interrogatories (7)"; and counsel for all said defendants accepted said further interrogatories, and said Further Interrogatories (5), Further Interrogatories (6) and Further Interrogatories (7) were filed in court on October 2, 1950.

On October 2, 1950, plaintiff filed its second further answer to Interrogatories (1), said second further answer being now designated "Second Further Answer of Labor-  
page 184 } num Construction Corporation to Summons of the  
Defendants to Answer Interrogatories (1)".

On October 2, 1950, plaintiff filed further interrogatories addressed to defendant, United Construction Workers, Affiliated With United Mine Workers of America, said further interrogatories being now designated "Further Interrogatories (8)"; further interrogatories addressed to defendant, District 50, United Mine Workers of America, said further interrogatories being now designated "Further Interrogatories (9)"; and further interrogatories addressed to defendant, United Mine Workers of America, said further interrogatories being now designated "Further Interrogatories (10)"; and on or about October 2, 1950, copies of said Further Interrogatories (8), Further Interrogatories (9) and Further Interrogatories (10) were delivered to counsel for all defendants and were accepted by said counsel.

On October 12, 1950, all parties came by counsel and defendant, United Mine Workers of America, filed its "Grounds of Objection to Interrogatories Addressed to United Mine Workers of America by the Complainant"; and after argument by counsel upon Interrogatories (4), Further Interrogatories (5), Further Interrogatories (6), Further Interrogatories (7), Further Interrogatories (8), Further Interrogatories (9) and Further Interrogatories (10), the court overruled Grounds of Objection to Interrogatories Addressed to United Mine Workers of America by the Complainant; and the court ruled further that on or before November 15, 1950, defendant, United Mine Workers of America,



(1) Must answer the questions in Interrogatories (4) numbered 1, 3 through 12, both inclusive, 13(a), (b), (c), 14 through 23, both inclusive, 24(a), (b), (c), (d), (e), 25, 26, 27(a), (b), (c), (d), (e), 28(a), (b), (c), (d), 29 through 33, both inclusive, 34(a), (b) 35(a), (b), 36, 37(a), (b), 38, 39, 40(a), (c), 41, 42 43(a), (b), 44, 46, 47 through page 185 } 60, both inclusive, 65 through 77, both inclusive, 79 through 94, both inclusive, 104, 113 through 117, both inclusive.

(2) Need not answer questions in Interrogatories (4) numbered 78, 123, 124 and 125, but counsel for defendant United Mine Workers of America, stated to the court that they would recommend to said defendant that said defendant submit to the court the minutes of all meetings of the International Executive Board of United Mine Workers of America held between the dates October 28, 1948; and August 4, 1949, and also since August 4, 1949, for inspection by the court in order that the court may determine what parts of such minutes, if any, must be furnished plaintiff; but counsel for defendant, United Mine Workers of America, contending that portions of said minutes contain confidential information, the court ruled tentatively over objection and exception of counsel for plaintiff that counsel for plaintiff shall not have access to the aforesaid minutes; and counsel for defendant, United Mine Workers of America, agreed to advise the court on or before October 24, 1950, whether or not defendant, United Mine Workers of America, will follow the aforesaid recommendation of counsel. Counsel for said defendant on or before said date advised the Court that said defendant would follow said recommendation, and said minutes covering said period have been made available to the Court.

(3) Need not answer questions 2, 13(d), 24(f), 27(f), 28(e), 34(c), 35(c), 37(c), (d), 40(b), 45, 61, 62, 63, 64, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 118, 119, 120, 121 and 122, as framed, but must answer questions 2, 13(d), 24(f), 27(f), 28(e), 34(c), 35(c), 37(c), (d), 40(b), 45, 61, 62, 63, 64, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 112, 118, 119, 120, 121 and 122, re-framed as follows:

2. Furnish a copy of the Charter, Constitution, Rules, Laws and By-Laws of United Mine Workers of America in effect between the dates October 28, 1948, and August 4, 1949, together with a copy of all changes or revisions made in same since August 4, 1949.



13(d). As used in the language quoted above what is meant by the words "joint agreements"?

24(f). As used in the language quoted above, what is meant by the words "joint agreement"?

27(f). As used in the language quoted above, what is meant by the words "joint agreements"?

28(e). As used in the language quoted above, what is meant by the words "joint agreements"?

34(c). During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did any person or member having been appointed for the purpose by the President of United Mine Workers of America collect and compile or attempt to collect or compile statistics relating to Region 58 of District 50 and United Construction Workers, or to the work and industries claimed by them, respectively? If so, what statistics were collected and compiled and what reports thereon were furnished to the President of United Mine Workers of America? Furnish a copy of all these reports.

35(c). What organizers, field and office workers did the President of United Mine Workers of America appoint or cause to be appointed to conduct or to assist in conducting the affairs of Region 58 of District 50 and the affairs of United Construction Workers, or either of them, during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and what organizers, field and office workers appointed or caused to be appointed by the President of United Mine Workers of America outside Region 58 of District 50 have come within the territorial limits of Region 58 of District 50 to conduct or to assist in conducting the affairs of Region 58 of District 50 and the affairs of United Construction Workers or either of them during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949?

37(c). Were interpretations of the meaning of said "International Constitution" made by the President of United Mine Workers of America (were in effect) between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949?

(d). During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did the President of United Mine Workers of America have the right to interpret or to cause to be interpreted the meaning of the constitutions or rules of District 50 and of United Construction Workers? If so, what interpretations of the meaning of

the said constitutions or rules made by the President of United Mine Workers of America were in effect between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949?

40(b). During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, how many appointments, suspensions and removals done by the President of United Mine Workers of America were approved by the International Executive Board, and how many appointments, suspensions and removals done by the President of United Mine Workers of America were disapproved by the International Executive Board.

45. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows:

"\* \* \* the President \* \* \* Vice President \* \* \* Secretary-Treasurer \* \* \* International Executive Board members \* \* \* tellers and auditors \* \* \* when employed \* \* \* shall receive, in addition to their salaries, such additional sums for additional service rendered as may be authorized and approved by the President; together with all legitimate expenses when employed by the organization away from their places of residence," and, if so, state the following:

(a) During what period or periods did said Constitution so provide?

(b) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did United Mine Workers of America pay to Thomas Raney, as a member of the International Executive Board of United Mine Workers of America, in addition to his salary, "additional sums for additional service rendered"? If so, what "additional sums" were paid to Thomas Raney; for what "additional service rendered" were such payments made; and when were such payments authorized and approved by the President of United Mine Workers of America?

(c) As used in the language quoted above, does the word "Organization" mean the United Mine Workers of America and its Districts, Sub-Districts, branches and subordinate branches, including District 50 and United Construction Workers? If not, what does that word mean?

61. Who are the persons who served as Regional Directors

of Region 58 of District 50 between the dates October 188 } tober 28, 1948, and August 4, 1949; when and by whom was each of these persons appointed a Regional Director; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as a Regional Director; and what were the locations of their respective offices?

62. Who are the persons who served as Regional Directors of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949; when and by whom was each of these persons appointed a Regional Director; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as a Regional Director; and what were the locations of their respective offices?

63. Who are the persons who have served as Regional Directors of Region 58 of District 50 since August 4, 1949, and when and by whom was each of these persons appointed a Regional Director; during what period or periods since August 4, 1949, has each served as a Regional Director; and what were the locations of their respective offices?

64. Who are the persons who have served as Regional Directors of Region 58 of United Construction Workers since August 4, 1949, and when and by whom was each of these persons appointed a Regional Director; during what period or periods since August 4, 1949, has each served as a Regional Director; and what were the locations of their respective offices?

95. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did John L. Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to the International Executive Board of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

96. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did A. D. Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

97. What written reports on work performed, page 189 } on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did Kathryn Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

98. What written reports on work performed, on matters of policy or on organization activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did O. B. Allen, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

99. What written reports on work performed on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did Thomas Raney, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

100. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did Thomas Davis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

101. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region

58 of District 50 or to Region 58 of United Construction Workers, did David Hunter, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

102. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did William O. Hart, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

103. What written reports on work performed, on matters of policy or on organizational activities pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, did H. G. Robinson, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.

105. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer or Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

106. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by United Mine Workers of America or by the International Executive Board or the President or any

other International Officer of United Mine Workers of America to District 50 or to the Administrative Officer or Secretary- Treasurer or Comptroller of District 50 between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

107. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by United Construction Workers or by its National Director or National Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

108. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by United Mine Workers of America or by the International Executive Board or the President or any other International Officer of United Mine Workers of America to United Construction Workers or to the National Director or National Comptroller of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

109. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by Thomas Raney, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, to United Mine Workers of America or to the International Executive Board or President of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

110. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by United Mine Workers of America or the International Executive Board or President of United Mine Workers of America to Thomas Raney, as an employee or



representative of United Mine Workers of America or District 50 or United Construction Workers, between the dates October 28, 1948, and August 4, 1949, and also page 192 } since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

111. What written instructions, statements, reports, memoranda, letters and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers, were submitted by David Hunter, as an employee or representative of District 50 or United Construction Workers or United Mine Workers of America, to Thomas Raney, as an employee or representative of District 50 or United Construction Workers or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949; and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

112. What written instructions, statements, reports, memoranda, letters and other papers were submitted by Thomas Raney, as an employee or representative of District 50 or United Construction Workers or United Mine Workers of America, to David Hunter, as an employee or representative of District 50 or United Construction Workers or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers.

118. Were charter fees, initiation fees and dues paid to United Mine Workers of America by its District Unions, Sub-District Unions, Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and, if so, why?

119. Were charter fees, initiation fees and dues paid to District 50 by its Sub-District Unions, Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and were portion or portions of such fees and dues paid by District 50 to United Mine Workers of America; and, if so, why?

120. Were charter fees, initiation fees and dues paid to United Construction Workers by its Sub-District Unions, Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and were any portion or portions of such fees and dues paid by United Construction Workers to United Mine Workers of America; and, if so, why?

121. State the following for the years 1948 and 1949 each:



page 193 } (a) Were funds advanced or paid by United Mine Workers of America to or for the account of District 50 or United Construction Workers, and why were such advances or payments made?

(b) Were fund advanced or paid by District 50 or United Construction Workers to or for the account of United Mine Workers of America, and why were such advances or payments made?

122. Has United Mine Workers of America during the years 1948 or 1949 guaranteed payment of any debts or obligations of District 50 or United Construction Workers, or acted as endorser on any notes or bonds of District 50 or United Construction Workers; and, if so, why?

On October 12, 1950, the court ruled that defendant, United Construction Workers, Affiliated With United Mine Workers of America need not answer the questions in Further Interrogatories (5) numbered 1 and 2, but must answer questions in Further Interrogatories (5) numbered 3 and 4 on or before November 15, 1950; that defendant, District 50, United Mine Workers of America, need not answer the questions in Further Interrogatories (6) numbered 1 and 2, but must answer questions in Further Interrogatories (6) numbered 3 and 4 on or before November 15, 1950; that defendant, United Mine Workers of America, need not answer the questions in Further Interrogatories (7) numbered 1 and 2, but must answer questions in Further Interrogatories (7) numbered 3 and 4 on or before November 15, 1950.

On October 12, 1950, the court ruled that defendant, United Construction Workers, Affiliated With United Mine Workers of America, must answer questions in Further Interrogatories (8) numbered 87, 88 and 89 on or before November 15, 1950; that defendant, District 50, United Mine Workers of America, must answer the questions in Further Interrogatories (9) numbered 89, 90 and 91 on or before November 15, 1950; and that defendant United Mine Workers of America, must answer questions in Further Interrogatories (10) numbered 118, 119, 120, 121 and 122 on or before November 15, 1950.

On October 12, 1950, plaintiff submitted to the court and to counsel for defendants further interrogatories addressed respectively to defendant, United Construction Workers, Affiliated with United Mine Workers of America, page 194 } said further interrogatories being now designated "Further Interrogatories (11)"; further interrogatories addressed to defendant, District 50, United Mine Workers of America, said further interrogatories being now

designated "Further Interrogatories (12)"; and further interrogatories addressed to defendant, United Mine Workers of America, said further interrogatories being now designated "Further Interrogatories (13)", and counsel for all said defendants accepted said further interrogatories which were filed in court on October 18, 1950.

On October 12, 1950, the court continued argument and rulings upon said Further Interrogatories (11), Further Interrogatories (12) and Further Interrogatories (13) until three o'clock p. m., October 24, 1950; it being understood that counsel for all parties at all times reserve all exceptions to all rulings of the court adverse to any party entitled to exception; and subject to their aforesaid exceptions the defendants filed their answers to said interrogatories (11), (12) and (13) on November 15, 1950.

HAROLD F. SNEAD

11/28/50.

page 197 }

Received and filed Jan. 11, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By L. C. M., D. C.

**MOTION FOR AN ORDER ALLOWING DEFENDANTS  
TO AMEND THEIR GROUNDS OF DEFENSE  
BY ADDING ADDITIONAL DEFENSES.**

Now come the defendants and move the Court for an order allowing them to amend their Grounds of Defense by adding thereto the following additional defenses:

*Ninth Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they are the result of the exercise by the defendants of rights granted by the Constitution and laws of the United States, including the Norris-LaGuardia

Act, 29 U. S. A. Sections 101-110, 113-115, the Clayton Act, 15 U. S. C. A. Sections 12-13, 14-21, 22-27, 29 U. S. C. A. Section 52, and the Labor Management Relations Act of 1947, 29 U. S. C. A. Section 141-197.

*Tenth Defense.*

To allow a recovery by the plaintiff would deprive the defendants of liberty and property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

page 198 } UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA; DISTRICT  
50, UNITED MINE WORKERS OF  
AMERICA; AND UNITED MINE  
WORKERS OF AMERICA, Defendants.  
By Counsel.

WILLIAMS, MULLEN, POLLARD & ROGERS  
By FRED G. POLLARD  
Counsel.

. . . . .

page 200 }

In the Circuit Court of the City of Richmond.

Jan. 15, 1951

. . . . .

ORDER.

This day came the parties by counsel, and upon consideration of the motion of the defendants filed herein for an order allowing them to amend their Grounds of Defense by adding additional defenses, and the arguments of counsel, it is

ADJUDGED AND ORDERED that the said motion be, and it is hereby, granted, and it is further

ADJUDGED AND ORDERED that the Grounds of Defense of the defendants be, and they are hereby, amended by adding the following additional defenses:

*Ninth Defense.*

The plaintiff's injuries and damages, if any, are not actionable for the reason that they are the result of the exercise by the defendants of rights granted by the Constitution and laws of the United States, including the Norris-LaGuardia Act, 29 U. S. C. A. Sections 101-110, 113-115, the Clayton Act, 15 U. S. C. A. Sections 12-13, 14-21, 22-27, 44; 29 U. S. C. A. Section 52, and the Labor Management Relations Act of 1947, 29 U. S. C. A. Sections 141-197.

page 201 }

*Tenth Defense.*

To allow a recovery by the plaintiff would deprive the defendants of liberty and property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Enter.

HAROLD F. SNEAD

1/15/51.

. . . . .

page 202 }

. . . . .

Received and filed Jan. 17, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

**FURTHER ANSWER OF LABURNUM CONSTRUCTION  
CORPORATION TO SUMMONS OF THE DEFEND-  
ANTS TO ANSWER INTERROGATORIES.**

For further answer to the summons directed by the Defendants to the Plaintiff, Laburnum Construction Corporation, to answer certain interrogatories filed in the Clerk's Office of the Circuit Court of the City of Richmond, Plaintiff answers and says:

14. Pursuant to the request of the Defendants that the Plaintiff make a further and more complete answer to Question No. 14 in the interrogatories filed by the Defendants in said Clerk's Office, the Plaintiff makes this further and supplemental answer.

Prior to October 28, 1948, Laburnum Construction Corporation was advised by representatives of Island Creek Coal Company and Pond Creek Pocahontas Company that they wished Laburnum Construction Corporation to handle the building program which those companies had in West Virginia. This program included the construction of stores, a lunch room, a beauty shop, a warehouse, churches, theaters, a community house and other work.

page 203 } Laburnum Construction Corporation was requested to prepare plans and specifications for the work covered by this building program and to submit them to representatives of Island Creek Coal Company and Pond Creek Pocahontas Company for approval, together with estimates of the cost of the work.

Under date of September 3, 1948, C. V. White, Real Estate Agent of Island Creek Coal Company and Pond Creek Pocahontas Company, wrote a letter to Laburnum Construction Corporation regarding this building program. A copy of this letter is attached hereto.

On or about October 28, 1948, Pond Creek Pocahontas Company awarded to Laburnum Construction Corporation a contract dated October 28, 1948, for the construction of a Coal Preparation Plant at the No. 1 Mine of Pond Creek Pocahontas Company in Breathitt County, Kentucky.

When the contract dated October 28, 1948, was awarded to Laburnum Construction Corporation, R. E. Salvati, President of Pond Creek Pocahontas Company, Island Creek Coal Company and various associated companies (at that time Mr. Salvati was Vice-President in charge of operations of Pond Creek Pocahontas Company, Island Creek Coal Company and various associated companies) said that Pond Creek Pocahontas Company had considerable work to be performed in Breathitt County, Kentucky, in addition to the construction of the Coal Preparation Plant at the No. 1 Mine. This additional work included, among other things, 200 Houses, 10 Supervisors' Houses, one large Store, one Service Store, a Change House, a Lamp House, a Superintendent's Office, Machine Shops, a Warehouse Building, a Sand House, a Church, a Schoolhouse, a water system and concrete foundations for a Coal Preparation Plant at the proposed No. 2 Mine (new

called No. 3 mine) of Pond Creek Pocahontas Company. The estimated cost of this additional work was \$617,500.00.

Mr. Salvati discussed this additional work with page 204 } Laburnum Construction Corporation and it was agreed that Laburnum Construction Corporation would handle same on a basis of cost plus a fee of five per cent. This was a part of the consideration which Laburnum Construction Corporation would receive for constructing the Coal Preparation Plant at the No. 1 Mine under the contract dated October 28, 1948. Mr. Salvati stated that Pond Creek Pocahontas Company felt obligated to have Laburnum Construction Corporation perform this additional work because of the extremely difficult conditions under which the Coal Preparation Plant would be constructed. The additional work, for the most part, would be constructed under much more favorable conditions.

Pursuant to the agreement with Mr. Salvati regarding this additional work in Breathitt County, Kentucky, Pond Creek Pocahontas Company from time to time awarded certain other contracts and jobs to Laburnum Construction Corporation. One of these contracts was a contract between Laburnum Construction Corporation and Spring Fork Development Company (a wholly owned subsidiary of Pond Creek Pocahontas Company) dated December 15, 1948, for the construction of 25 dwellings.

A full statement regarding this additional work in Breathitt County, Kentucky, is set out in a previous answer filed by Laburnum Construction Corporation to Question No. 14.

As alleged in the Notice of Motion for Judgment, the said contracts dated October 28, 1948, and December 15, 1948, were terminated by Pond Creek Pocahontas Company and Spring Fork Development Company, respectively, on August 4, 1949. Between September 6, 1947, and August 4, 1949, Pond Creek Pocahontas Company, Island Creek Coal Company and their associated or subsidiary companies awarded to Laburnum Construction Corporation twelve separate contracts for construction work in the States of Kentucky and page 205 } West Virginia amounting to a total of more than \$650,000.00. Laburnum Construction Corporation earned a substantial net profit on these jobs. Pond Creek Pocahontas Company and Island Creek Coal Company, though separate corporations, have a common management.

Since August 4, 1949, Laburnum Construction Corporation has submitted proposals to Pond Creek Pocahontas Company and Island Creek Coal Company for work in West Virginia and Kentucky. None of these proposals, however, have been

accepted. A statement regarding these proposals is as follows:

(a) On September 5, 1949, Laburnum Construction Corporation submitted a proposal to Pond Creek Pocahontas Company to furnish labor and materials necessary to install a heating plant in connection with the Coal Preparation Plant at the No. 1 Kentucky Mine for the lump sum of \$25,595.00.

Laburnum Construction Corporation was not awarded a contract for this work.

(b) On September 7, 1949, Laburnum Construction Corporation submitted a proposal to Pond Creek Pocahontas Company to furnish labor and materials necessary to construct a Store, two 6-room frame dwellings and thirteen 5-room frame dwellings at Evanston, Kentucky, near the No. 1 Kentucky Mine in Breathitt County, Kentucky, all for the lump sum of \$205,047.00. The proposal provided that Pond Creek Pocahontas Company would carry and maintain adequate insurance protecting the work and materials at the job sites against loss, damage or destruction resulting from vandalism and acts of mischief, malicious or otherwise, and that this insurance would be for its benefit as well as for the benefit of Laburnum Construction Corporation. The proposal further provided that if a contract should be awarded to Laburnum Construction Corporation, it intended to use craft labor employees affiliated with the A. F. of L.

Laburnum Construction Corporation was not awarded a contract for this work.

(c) On September 29, 1949, Laburnum Construction Corporation submitted a proposal to Pond Creek Pocahontas Company to construct an Addition to a Store Building at Bartley, West Virginia, on a basis of cost plus a fee of eight per cent. Laburnum Construction Corporation estimated that the cost of this work would amount to \$28,877.00. There were, however, no drawings and specifications for this job.

Laburnum Construction Corporation also offered to perform this work on a lump sum basis of \$28,877.00; provided, however, drawings and specifications should be prepared so that there would be no misunderstanding as to what the price included.

page 206 } Laburnum Construction Corporation did not receive a contract for the work covered by that proposal.

(d) On or about November 4, 1949, Laburnum Construction Corporation submitted a proposal to Island Creek Coal Company to construct a Community Building near Ragland or Delbarton, West Virginia, for a lump sum of \$94,359.00.



Laburnum Construction Corporation was thereafter advised that this proposal would not be acted on because Island Creek Coal Company had decided to make considerable changes in the building and that it would be necessary to revise the drawings and specifications.

(e) On November 23, 1949, Laburnum Construction Corporation submitted another proposal to Pond Creek Pocahontas Company to construct an Addition to the Store at Bartley, West Virginia, for the lump sum of \$37,308.00. The work to be performed was considerably different from the work covered by the proposal submitted by Laburnum Construction Corporation dated September 29, 1949.

As of November 23, 1949, Laburnum Construction Corporation was in the course of constructing a Boiler Plant at Bartley, West Virginia, for Pond Creek Pocahontas Company. Representatives of United Mine Workers of America on or about November 10, 1949, protested to representatives of Pond Creek Pocahontas Company against Pond Creek Pocahontas Company permitting Laburnum Construction Corporation to construct the Boiler Plant with A. F. of L. labor. These representatives of United Mine Workers of America said that all work in, near or in connection with coal mines must be performed by workers who were members of United Mine Workers of America. They advised the representatives of Pond Creek Pocahontas Company that unless this matter was straightened within five days, the miners employed by Pond Creek Pocahontas Company at the No. 1 Tipple at Bartley, West Virginia, would stop work.

Laburnum Construction Corporation did not receive a contract for the construction of the Addition to the Store at Bartley, West Virginia, in accordance with the proposal dated November 23, 1949.

(f) On December 29, 1949, Laburnum Construction Corporation submitted a proposal to Pond Creek Pocahontas Company to construct a proposed Service Station at Bartley, West Virginia, on a basis of cost plus eight per cent. It was estimated that the cost of this work would amount to \$5,596.00.

Laburnum Construction Corporation did not receive a contract for the work covered by its proposal dated December 29, 1949.

(g) On or about January 16, 1950, Laburnum Construction Corporation submitted a proposal to Island Creek Coal Company to construct a Main Office Building, near Ragland or Delbarton, West Virginia, for the lump sum of \$28,012.00.

Laburnum Construction Corporation did not receive a contract for this work. A contract for same was awarded by Island Creek Coal Company

to R. H. Hamill Company, of Huntington, West Virginia. The work of R. H. Hamill Company on this job was interrupted by representatives of District 50 and United Construction Workers, and R. H. Hamill Company was unable to complete same. This work was taken over and completed by Frederick Engineering Company, a contractor which had an agreement with United Construction Workers.

(h) During April and May, 1950, Laburnum Construction Corporation was preparing and had substantially completed an estimate of the cost of constructing a Church and a Recreation Building for Island Creek Coal Company near Ragland or Delbarton, West Virginia. Laburnum Construction Corporation intended to submit a proposal for this work during May, 1950.

Just prior to the time when Laburnum Construction Corporation intended to submit this proposal, it learned that the work of R. H. Hamill Company in connection with the Office Building near Ragland or Delbarton, West Virginia, had been interrupted by representatives of District 50 and United Construction Workers. In view of this, Laburnum Construction Corporation decided that, before submitting a proposal for the Church and the Recreation Building, it should investigate what had occurred in connection with the work of R. H. Hamill Company on the Office Building.

On May 15, 1950, a representative of Laburnum Construction Corporation went to the office of A. D. Hunter, Regional Director of District 50 and United Construction Workers, in Pikeville, Kentucky. Mr. Hunter was informed that Laburnum Construction Corporation wished to submit a proposal to construct a Church Building and a Recreation Building for Island Creek Coal Company near Ragland or Delbarton, West Virginia, and that it would like to have an understanding with Mr. Hunter that if Laburnum Construction Corporation obtained a contract for that work, neither United Construction Workers nor District 50 would interfere with same and intimidate the workers of Laburnum Construction Corporation as was done in the case of the work in Breathitt County. Mr. Hunter was informed that if Laburnum Construction Corporation performed the work near Ragland or Delbarton, it would do so with A. F. of L. labor.

Mr. Hunter said that he would not agree to this; that Mingo County, West Virginia, was the territory of  
 page 208 } United Construction Workers; and that the A. F.  
 of L. had no business coming in there. Mr. Hunter said that if Laburnum Construction Corporation obtained additional work in Mingo County, West Virginia, Paintsville,

Kentucky, or elsewhere in his area, he would attempt to organize the laborers and other workers of Laburnum Construction Corporation as was done in connection with the work in Breathitt County, Kentucky, and that Laburnum Construction Corporation would be expected to make an agreement with United Construction Workers.

Mr. Hunter was also asked about the work of R. H. Hamill Company on the Office Building near Ragland or Delbarton, West Virginia. He confirmed the fact that representatives of District 50 and United Construction Workers had stopped the work of R. H. Hamill Company on that job; that R. H. Hamill Company had not continued with the work; and that the job had been taken over by Frederick Engineering Company which had an agreement with United Construction Workers.

On the following day, May 16, 1950, a representative of Laburnum Construction Corporation reported to Mr. R. E. Salvati, President of Island Creek Coal Company and Pond Creek Pocahontas Company, the above conversation with Mr. A. D. Hunter which occurred on May 15, 1950.

Mr. Salvati was told that it would not be possible for Laburnum Construction Corporation to construct the Church and the Recreation Building near Ragland or Delbarton, West Virginia, unless a sufficient number of guards should be brought in to protect the work while under construction and also to protect the employees of Laburnum Construction Corporation while performing the work. It was pointed out to Mr. Salvati that unless a sufficient number of guards were on hand, the employees of Laburnum Construction Corporation would be driven from their work as was done in the case of the job in Breathitt County, Kentucky, and that the work under construction might be destroyed by fire or  
page 209 } dynamite. The representative of Laburnum Construction Corporation said that it was not possible to estimate the cost involved in furnishing a sufficient number of guards to protect the work, and asked Mr. Salvati if Island Creek Coal Company would furnish the guards.

The representative of Laburnum Construction Corporation also informed Mr. Salvati that Laburnum Construction Corporation would not care to enter into a lump sum contract which it could not complete. He asked Mr. Salvati if Island Creek Coal Company would consider having Laburnum Construction Corporation perform that work on a cost-plus basis.

Mr. Salvati said that Laburnum Construction Corporation should not submit a proposal for the Church and Recreation Building if there was any question as to whether same could be completed by it. Mr. Salvati said that he would think

about the matter and would talk about it with Mr. J. D. Francis, Chairman of the Board of Island Creek Coal Company and Pond Creek Pocahontas Company, and that he would then let Laburnum Construction Corporation hear from him.

On May 18, 1950, Mr. R. E. Salvati wrote a letter to A. Hamilton Bryan, President of Laburnum Construction Corporation, suggesting that Laburnum Construction Corporation refrain from bidding on the Church Building and Recreation Building. A copy of this letter dated May 18, 1950, is attached hereto.

Under date of May 23, 1950, A. Hamilton Bryan wrote a letter replying to Mr. Salvati's letter of May 18, 1950. A copy of this letter is attached hereto.

Since May 18, 1950, the date of the letter from Mr. R. E. Salvati, President, referred to above, Laburnum Construction Corporation has not been invited by Island Creek Coal Company or Pond Creek Pocahontas Company or any of their associated or subsidiary companies to submit proposals to perform additional work.

page 210 } Laburnum Construction Corporation has been advised that it has not been invited by Island Creek Coal Company or Pond Creek Pocahontas Company or any of their associated or subsidiary companies to submit proposals to perform additional work because Island Creek Coal Company and Pond Creek Pocahontas Company could not be assured that Laburnum Construction Corporation would be able to complete a job which they might award to it at or near the coal mines; and for the further reason that, in the opinion of Mr. Salvati and the operating management of Island Creek Coal Company and Pond Creek Pocahontas Company, it was inadvisable to award work to Laburnum Construction Corporation because labor trouble might spread to the operation of the coal mines and to other work which Island Creek Coal Company and Pond Creek Pocahontas Company might be doing, and that because of this situation, they have felt it inadvisable to ask Laburnum Construction Corporation for bids on further work.

Since August 4, 1949, the date as of which the two contracts dated October 28, 1948, and December 15, 1948, were terminated, no contract for additional work has been awarded to Laburnum Construction Corporation by either Pond Creek Pocahontas Company or Island Creek Coal Company or their associated or subsidiary companies.

The Plaintiff is advised and believes that the actions of the Defendants herein caused the Plaintiff to lose the additional work in Breathitt County, Kentucky, amounting to a

sum in excess of \$600,000.00, which work it had been agreed would be performed by Laburnum Construction Corporation on a basis of cost-plus five per cent.

The Plaintiff is advised and believes that the actions of the Defendants herein further caused the Plaintiff to lose contracts for all the work on which it submitted proposals to Pond Creek Pocahontas Company or Island Creek Coal Company after August 4, 1949.

page 211 } The Plaintiff is advised and believes that the actions of the Defendants herein further caused Plaintiff to lose contracts for work in connection with the building program of Island Creek Coal Company and Pond Creek Pocahontas Company in West Virginia, which work it had been agreed Laburnum Construction Corporation would handle.

The business relationship and connection which Laburnum Construction Corporation had built up with Pond Creek Pocahontas Company and Island Creek Coal Company and their associated and subsidiary companies had resulted in substantial net profits to Laburnum Construction Corporation. This business relationship and connection would have continued to result in substantial profits to Laburnum Construction Corporation. The actions of the Defendants herein have completely destroyed this business relationship and connection. This has resulted in a large loss to Laburnum Construction Corporation.

#### LABURNUM CONSTRUCTION CORPORATION

By A. HAMILTON BRYAN, Pres.

I certify that a copy of the foregoing was delivered January 16, 1951, to Williams, Mullen, Pollard and Rogers by delivering a copy to Mr. Robert N. Pollard.

ARCHIBALD G. ROBERTSON

Counsel

page 212 } State of Virginia,  
City of Richmond, to-wit:

This day A. Hamilton Bryan personally appeared before me, Phyllis C. Burkey, a Notary Public in and for the City and State aforesaid in my City aforesaid and made oath that he is President and agent of Laburnum Construction Corporation and as such he is authorized to make this affidavit, and the said A. Hamilton Bryan further made oath that the mat-

ters and things stated in the foregoing Further Answer of Laburnum Construction Corporation to Summons of the Defendants to Answer Interrogatories are in all respects true and correct to the best of his information, knowledge and belief.

Given under my hand this 16th day of January, 1951.

My commission expires August 31st, 1951.

PHYLLIS C. BURKEY  
Notary Public

page 213 } ISLAND CREEK COAL COMPANY

Huntington, West Virginia

September 3, 1948

C. V. White  
Real Estate Agent

Laburnum Construction Corporation  
918 East Main Street  
Richmond, Virginia

Attention: Mr. A. Hamilton Bryan

Gentlemen:

*Re: Building Program*

Mr. Christie, Mr. Beattie, Mr. Saxe, Mr. Flint, and the writer discussed proposed Bartley Store, to replace one that burned recently. Mr. Beattie made a rough estimate of the cost, which I understand he will check and we will be advised within a few days. I am unable to give you the floor plan of this building at this time; but Mr. Flint expects to have it ready within a few days and we will forward it to you.

In connection with our building program, about which we have had considerable correspondence, I would like to have you keep in mind the priority for the completion of these buildings, which is as follows:

1. Bartley Store (mentioned above).
2. No. 15 Store. Floor plan for this building was furnished Mr. Beattie and we request that you prepare plans and speci-

fications and forward to Mr. Saxe, with copy to me, as soon as possible.

3. Club Lunch Room.
4. Beauty Shop.
5. Appliance Warehouse.

I will advise you later on the matter of Churches and Theaters. We are also drawing a floor plan for a Community House which will be approximately 64' wide and 100' in length, with a basket-ball court, bowling alley, and other recreational facilities. All of the above buildings will be at Holden or Pigeon Creek with the exception of Bartley Store.

As pointed out above, Bartley Store and No. 15 page 214 } Store have first priority, and we would like to have them completed before the first of the year. As soon as agreement can be reached on the above, we would like for you to be ready to put additional crews on these projects.

I am suggesting that you send the plans, pending final approval, to Mr. Saxe in order that time may be saved.

Very truly yours,

/s/ C. V. WHITE  
C. V. WHITE  
Real Estate Agent

CVW:ss

cc: Mr. J. A. Sax  
Holden, W. Va.

page 215 } ISLAND CREEK COAL COMPANY

Huntington  
West Virginia

May 18, 1950

R. E. Salvati,  
President

Mr. A. Hamilton Bryan, President  
Laburnum Construction Company  
Richmond, Virginia

Dear Mr. Bryan:

I have seriously considered your bidding on the recreation building and church at Rockhouse. Since I talked to you, I find that we have about four or five other reputable and well



qualified concerns, which have contracts with the United Mine Workers, that are going to bid. In view of this situation, it seems to me that it would be better that you refrain from bidding because of the facts outlined to me in our conversation Monday evening.

I regret that these circumstances prevail, but I believe it is better to go along with the suggestion which I have outlined.

I was glad to have an opportunity to talk and be with you.

With kindest regards.

Sincerely,

/s/ R. E. SALVATI

RES:es

page 216 } LABURNUM CONSTRUCTION CORPORATION

918 East Main Street  
Richmond, Virginia  
P. O. Box 1234

May 23, 1950

Mr. R. E. Salvati, President  
Island Creek Coal Company  
Huntington, West Virginia

Dear Mr. Salvati:

I thank you for your letter dated May 18, 1950, advising that you have seriously considered our bidding on the Recreation Building and Church at Rockhouse, and that, because of the facts which I outlined to you last Tuesday evening, you think that it would be better for us to refrain from bidding.

I am sorry to say that the United Construction Workers appear determined to try to prevent us from performing and completing work for you in the coal field unless we enter into an agreement with that organization. As you know, we are not in a position to do this.

We also regret that these circumstances prevail. We have valued highly the connections established between our company and your organization, and had hoped that from time to time we would be able to perform additional work for you.

May I take this opportunity to thank you personally for the splendid cooperation which your organization has always given to us in connection with our work as well as for the cordial relations which have been maintained throughout.

I hope that in the future circumstances will be changed so that we can again undertake to perform some of your work

With kindest regards, I am

Sincerely yours,

/s/ A. HAMILTON BRYAN  
President

AHB/eos

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#### ORDER FILING AFFIDAVIT.

This day came Fred G. Pollard and tendered his affidavit in which he made oath that he is the attorney and agent of the defendants in the above entitled action; that there are, the defendants verily believe, in the possession of A. Hamilton Bryan certain books of account and certain periodic audit statements showing the amount of work performed by the plaintiff in the last ten years and for whom such work was performed; and the defendants desire that a summons be issued pursuant to the provisions of Section 8-301, Code of Virginia 1950, requiring A. Hamilton Bryan, president of plaintiff corporation to produce said documents, it is

ORDERED that said affidavit be, and the same hereby is, filed.

Enter:

HAROLD F. SNEAD.

1/23/51

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. . . . .

AFFIDAVIT

State of Virginia:

City of Richmond: to-wit:

This day in the City of Richmond Fred G. Pollard personally appeared before me, Florence Wood, Notary Public in and for the City aforesaid, State of Virginia, and made oath that he is the attorney and agent of the defendants in the above entitled action; that there are, the defendants verily believe, in the possession of A. Hamilton Bryan certain books of account and certain periodic audit statements showing the amount of work performed by the plaintiff in the last ten years and for whom such work was performed; and the defendants desire that a summons be issued pursuant to the provisions of Section 8-301, Code of Virginia 1950, as amended, requiring A. Hamilton Bryan, President of plaintiff corporation, to produce documents herein referred to as the defendants verily believe that said documents are in the possession of said A. Hamilton Bryan inasmuch as he has testified that the plaintiff has done over the last ten years "over \$20,000,000 worth of work".

FRED G. POLLARD,  
Agent for Company.

Filed Jan. 23, 1951.

Teste:

WILBUR J. GRIGGS, Clerk.

BY E. M. ERWARDS, D. C.

. . . . .

page 223 }

. . . . .

ORDER FILING AFFIDAVIT.

This day came Fred G. Pollard and tendered his affidavit in which he made oath that he is the attorney and agent of the defendants in the above entitled action; that there are, the defendants verily believe, in the possession of A. Hamilton Bryan certain income tax returns for the states of Virginia, West Virginia and Kentucky showing the income of the

plaintiff for the years 1947, 1948 and 1949, as well as books of accounts and certain periodic audit statements showing the amount of net profits on the work performed by the plaintiff in the years 1947, 1948 and 1949, for Island Creek Coal Company and Pond Creek Pocohontas Coal Company, and the defendants desire that a summons be issued pursuant to the provisions of Section 8-301, Code of Virginia 1950, requiring A. Hamilton Bryan, president of plaintiff corporation to produce said documents, it is

ORDERED that said affidavit be, and the same hereby is, filed.

Enter.

HAROLD F. SNEAD

1/24, 51.

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#### AFFIDAVIT.

State of Virginia:

City of Richmond: to-wit:

This day in the City of Richmond Fred G. Pollard personally appeared before me, Florence Wood, a Notary Public in and for the City aforesaid, State of Virginia, and made oath that he is the attorney and agent of the defendants in the above entitled action; that there are, the defendants verily believe in the possession of A. Hamilton Bryan, certain Income Tax returns for the States of Virginia, West Virginia, and Kentucky showing the income of the plaintiff for the years 1947, 1948, and 1949, as well as books of account and certain periodic audit statements showing the amount of net profits on the work performed by the plaintiff in the years 1947, 1948, and 1949 for Island Creek Coal Company and Pond Creek Pocahontas Coal Company; and the defendants desire that a summons be issued pursuant to the provisions of Section 8-301. Code of Virginia 1950, as amended, requiring A. Hamilton Bryan, President of plaintiff corporation, to produce documents herein referred to as the defendants verily believe that said documents are in the

possession of said A. Hamilton Bryan insasmuch as he has testified that the plaintiff has earned a net profit of over \$28,000 on such work in such years.

FRED G. POLLARD,  
Agent for Company.

Filed Jan. 24, 1951.

Teste:

WILBUR J. GRIGGS, Clerk.  
By E. M. EDWARDS, D. C.

. . . . .

page 227 }

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ORDER.

This day came the defendants District 50, United Mine Workers of America, and United Construction Workers affiliated with United Mine Workers of America by counsel and moved the Court for an order permitting them to file their amended answers to plaintiff's Interrogatory No. 85 addressed to the defendant, District 50, United Mine Workers of America, and plaintiff's Interrogatory No. 83 addressed to United Construction workers affiliated with United Mine Workers of America on the ground that the answers heretofore filed by these defendants to the aforementioned Interrogatories contain typographical errors.

And upon consideration of the said motion and the arguments of counsel for plaintiff and defendants it is

ADJUDGED AND ORDERED that the said amended answers be, and the same are hereby, filed.

HAROLD F. SNEAD.

24 day of January, 1951.

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ANSWER OF DISTRICT 50, UNITED MINE WORKERS  
OF AMERICA TO INTERROGATORY 85 AD-  
DRESSED TO UNITED MINE WORKER OF  
AMERICA TO AMEND AND CORRECT THE AN-  
SWER HERETOFORE MADE TO QUESTION 85.

85. As to the National Director of United Construction Workers, no; as to the Comptroller of United Construction Workers, no; as to Thomas Raney, no; as to Thomas Davis, no; as to David Hunter, yes; as to William O. Hart, yes; as to H. J. Robinson, no.

(a) Chairman, Organizing Committee, District 50, United Mine Workers of America.

(b) Answered.

(c) During all periods inquired about.

(d) No set rules to govern. It is a matter of administrative practice.

DISTRICT 50,  
UNITED MINE WORKERS OF  
AMERICA

By JOHN V. JOHNSON

Assistant to the Chairman, Organizing  
Committee, District 50, United Mine  
Workers of America,  
In Charge of Files and Records

Filed Jan. 24, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

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ANSWER OF UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE WORKERS OF  
AMERICA TO INTERROGATORY 83 ADDRESSED  
TO IT TO AMEND AND CORRECT THE ANSWER  
HERETOFORE MADE TO QUESTION 83.

83. As to the National Director of United Construction Workers, no; as to the Comptroller of United Construction Workers; no; as to Thomas Raney, no; as to Thomas Davis, no; as to David Hunter, yes; as to William O. Hart, yes; as to H. J. Robinson, no.

(a) Chairman, Organizing Committee, District 50, United Mine Workers of America.

(b) Answered.

(c) During all periods inquired about.

(d) No set rules to govern. It is a matter of administrative practice.

UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA

By JOHN V. JOHNSON

Assistant to the Director United Construction Workers, affiliated with United Mine Workers of America,  
In Charge of Files and Records

Filed Jan. 24, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

page 236 }

ORDER.

This day came the parties by counsel, and the defendants by counsel having tendered their Motion for Mistrial to the Court, it is accordingly

ADJUDGED AND ORDERED that the said Motion be, and it is hereby, filed.

HAROLD F. SNEAD

29 day of January, 1951.



page 237 }

. . . . .

Filed Jan. 29, 1951.

Teste :

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

## MOTION FOR MISTRIAL.

Now come the defendants separately and severally and jointly and move the court to discharge the jury and to declare a mistrial in this cause, and for grounds of this motion assign the following separately and severally:

(1) Counsel for the plaintiff has engaged in highly prejudicial, inflammatory, poisonous and false argument to the jury injected for the purpose of prejudicing the jury and piling up punitive damages as a part of the verdict sought by the plaintiff.

On Friday, January 26, 1951, near the conclusion of these proceedings, counsel for plaintiff used this language in the presence and hearing of the jury:

"They (referring to the defendants, United Construction Workers and the Mine Workers) are an outlaw organization. I state that. They are outlawed under the Taft-Hartley Act. I will talk a little law on that."

page 238 } (2) Immediately preceding the utterance of  
Counsel for the plaintiff, made the basis of  
Ground No. (1), Counsel for plaintiff made the following  
statement in the presence and hearing of the jury:

"I think he has a right to say it, your Honor. He (referring to Mr. Mullen, Counsel for Defendants) asked for it, and he (the witness, A. Hamilton Bryan) gave it to him."

(3) At or near the close of the day's proceedings in this cause on January 26, 1951, the question of adjournment to Monday, January 29, 1951, was under consideration. Counsel for the plaintiff used the following language in the presence of and in the hearing of the jury.

"I was going to say I think that is all right because they want it to go over until Monday anyway, you see, to keep Mr. Bryan on the stand."

And further in reply to Mr. Mullen's question as to whether plaintiff's counsel would want it to go over, plaintiff's counsel replied:

"Not if I were getting it like you are."

Defendants separately and severally and jointly assign as additional grounds for this motion to discharge the jury and declare a mistrial the statements made by A. Hamilton Bryan, witness for the plaintiff, and President of plaintiff corporation, while on the witness stand testifying as a witness as follows, to-wit:

(4) In response to the following question by Counsel for defendants:

page 239 } "Q. You followed the identical same plan in Hopewell to block off the Construction Workers, who had a perfect right to organize your unorganized labor, and you followed the same thing in Kentucky. Instead of sitting down and talking with them to see if you could reach an agreement, you immediately set out to fight them, didn't you, and to block them?"

The witness, A. Hamilton Bryan, made answer:

"A. United Construction Workers and the Mine Workers are outlaw organizations when you come down to it."

And to this statement of the witness, Counsel for the defendants then and there in open court in the presence and hearing of the jury stated:

"I object to that, if Your Honor please."

(5) Defendants charge that the statement of the witness, A. Hamilton Bryan, just quoted in the preceding *gound* hereof, was not responsive to the question asked him, was entirely voluntary, was highly inflammatory and prejudicial, was for the purpose of injecting poison and prejudice against the defendants in this cause, and that said statement was false and also injected for the purpose of wrongfully and illegally

prejudicing the jury against the defendants and piling up a verdict for punitive damages.

(6) The witness, A. Hamilton Bryan, President of the plaintiff, and while testifying as a witness for the plaintiff, was asked by Counsel for the defendants the following question:

"You went out to Kentucky on the 19th, and you didn't communicate with Mr. Hart. Did you ask Mr. Delinger what had been done?"

page 240 } And to said question the aforesaid witness, A. Hamilton Bryan, made answer as follows:

"Mr. Mullen, I would just as soon negotiate with Mr. Hart (referring to Mr. Hart, the District Representative of United Construction Workers affiliated with United Mine Workers of America and District Representative of District 50, United Mine Workers of America) as I would negotiate with a robber that threatened to rob my house."

And defendants do herewith and hereby charge that the quotation just made was not in response to any question by Counsel for defendants, was highly prejudicial, poisonous and inflammatory, and was injected for the purpose of piling up a verdict for punitive damages against the defendants.

(7) Defendants charge and represent to this Court that the foregoing remarks of both Counsel for plaintiff and of the witness, A. Hamilton Bryan, are each of such highly prejudicial, poisonous and inflammatory nature that the poison and prejudice injected in this cause thereby cannot be removed by any direction or instruction of this Honorable Court, and the only way these defendants can obtain justice and a fair and impartial trial is for this Court to order the jury discharged and to declare a mistrial in this cause.

(8) Defendants allege that the conduct hereinabove set forth, as a basis of grounds (1) through (7) inclusive, occurred near the close of the proceeding on January 26, 1951, and were cumulative of a course of conduct which had been indulged in by Counsel for plaintiff and by the witness, A. Hamilton Bryan, from the beginning of the testimony of the witness up to and including the occurrences hereinabove listed, said prior statements and testimony being as follows, to-wit:

When Counsel for defendants asked the witness, A. Hamilton Bryan, the following question:

"Q. You were not told it was because of any of the difficulties you had already had there, were you?"

He made answer as follows:

"A. No, we were not given any reason. We, frankly, conditioned the bid in certain ways that I think were objectionable to Pond Creek. For one thing, we said that we expected them to keep those roads in passable condition so we could get in and out, and I don't think they liked that very much.

"For the second thing, we asked that they provide builder's risk insurance with extended coverage, which would protect the buildings against loss or destruction from malicious mischief or acts of vandalism. That was put in there purposely in order to get some protection in case the United Construction Workers and that crowd should come in there and burn the building down."

(9) During the examination of the witness, A. Hamilton Bryan, President of the Plaintiff, by Mr. Archie G. Robertson, Attorney for the Plaintiff, on January 23, 1951, the aforesaid attorney made the following statement in the presence and hearing of the jury:

"We are suing here in all earnestness and good faith for the biggest lawsuit that I personally have ever been in."

And the defendants allege that the aforesaid statement of counsel was wholly without any evidence in the cause to justify this statement.

page 242 } (10) During the direct examination of the witness, A. Hamilton Bryan, President of the Plaintiff corporation, by Mr. Archie G. Robertson, Counsel for Plaintiff, a colloquy arose when defendants' counsel made objection as follows:

"Colonel Harris: We object to the witness reading from a document. I notice he keeps looking at the document and then turning the pages."

During the aforesaid colloquy Mr. Robertson, the aforesaid Counsel for Plaintiff in the presence and hearing of the jury made the following statement:

"It seems to me, your Honor, that the real purpose of my friend here is to break in on this story and destroy the effectiveness of the testimony."

And the defendant alleges that the purpose imputed to counsel for defendant was not the real purpose of counsel and the statement so made was false and highly prejudicial.

(11) During the direct examination of the witness, A. Hamilton Bryan, President of the Plaintiff, by Counsel for Plaintiff, on January 24, 1951, counsel for defendant made the following objection:

"Mr. Mullen: If your Honor please, if the only part relevant is the telephone number, it is improper to put in a whole newspaper in evidence in the record."

Whereupon, Mr. Robertson, Counsel for Plaintiff, in the presence and hearing of the jury made the following statement:

"Mr. Robertson: If your Honor please, I brought it here -- of course, if I had brought one sheet they would have said that looked might fishy."

(12) During the course of the direct examination of the witness A. Hamilton Bryan, President of the Plaintiff, Counsel, Mr. Fred G. Pollard, objected to a question by counsel for Plaintiff, which objection the court then and there overruled. Whereupon, the following occurred:

"Mr. Robertson: You ought to go to night school Freddie."

"Mr. Mullen: We object to a remark like that.  
page 243 } We are trying to facilitate the case.

"The Court: The jury will disregard sidebar remarks."

And the defendant alleges that the personal remark about Mr. Fred Pollard, one of the defendants' counsel, was highly prejudicial and was made for the purpose of intimating to the jury any further statement or argument made in their presence and hearing by Mr. Fred Pollard was not worthy of belief or consideration by them because he was an ignorant lawyer and needed to go to night school.

And defendant further alleges that the remark was false and unjustified for the reason that Honorable Fred Pollard

has already gone to Law School and received his LL.B. degree from the Law School of the University of Virginia during the year 1942, and defendants further allege that said Law School has a high reputation not only in the State of Virginia, but among educated and experienced lawyers throughout the boundaries of the United States.

(13) During the course of the cross examination of the witness, A. Hamilton Bryan, by Mr. Mullen, Attorney for the defendants, he asked the witness the following question:

"Q. By 'lay off', he meant recognition of the A. F. of L. by U. C. W.?"

"A. I don't see what you could say about that, because United Construction Workers certainly didn't recognize the A. F. of L. at Wheelright when they went there with 200 or 300 men and broke up a job."

And defendants allege that the quoted answer was made in order to arouse prejudice against the defendants, and particularly against United Construction Workers, and was the gratuitous introduction of a transaction which was not a part of the transactions complained of by the Plaintiff in its Notice of Motion for Judgment.

page 244 } (14) During the course of the cross examination of the witness, A. Hamilton Bryan, President of the Plaintiff, said witness disregarded the rulings of the Court, for instance, Counsel for the plaintiff objected to a question by Mr. Mullen whereupon the following proceedings were had:

"Q. Would you have done it?"

"Mr. Robertson: If your Honor Please, that is getting right into the realm of speculation. You can get into all sorts of things."

"The Court: I will sustain the objection."

"The Witness: We were trying our best to cooperate with the Paintsville Local."

"The Court: I sustained the objection."

"The Witness: To try to have friendly relations."

"Colonel Harris: Will your Honor exclude that statement made after you had ruled?"

"The Court: Gentlemen, the statement made by Mr. Bryan after the court sustained by objection should be disregarded by you."

(15) During the course of the cross examination of the witness, A. Hamilton Bryan, President of the Plaintiff, the following proceedings were had:

"Q. They were working there because they wanted a job, weren't they?

"A. Most of them had been working there since November, 1948. This was sometime in July, almost nine months, and there never had been any discussion, no trouble. Everything was going smoothly, as far as things could go on a job of that kind.

"Q. I am not asking you that question. I am asking you what chance was there that they would refuse when they were put on the spot by an employee of the company undertaking to say what union they must go in and presenting it to them at the direction of the boss of the job?

"A. Nobody was being put on the spot at all.

"Q. That is what you may call it.

"A. They were being given.

page 245 } "Mr. Robertson: If that is what you call it, it doesn't make it so. That is what you said.

"The Court: You gentlemen are even now.

"Mr. Mullen: That is a matter of inference for the jury.

"The Witness: Those laborers had sense enough to know that the United Construction Workers and the A. F. of L. people wouldn't work out very well together.

"Colonel Harris: Your Honor, will you exclude that statement as not responsive to any question?

"The Court: Gentlemen, I instruct you to disregard the last statement which was made by Mr. Bryan."

JAMES MULLEN  
CRAMPTON HARRIS  
Counsel for Defendants

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Virginia:

In the Circuit Court of the City of Richmond, Monday, the 12th day of February, 1951.



This day came the plaintiff and defendants, by counsel, and filed their stipulation in writing.

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### STIPULATION.

It is stipulated between the plaintiff and the defendants by their respective counsel that Pond Creek Pocahontas Company began to mine coal at its No. 1 mine at Evanston, Kentucky, during June, 1949, and that a substantial part of such coal was shipped by The Chesapeake and Ohio Railway Company from the place it was mined at Evanston, Kentucky, to points outside of the State of Kentucky during June and July, 1949.

ARCHIBALD G. ROBERTSON  
Counsel for Plaintiff  
GEO. E. ALLEN  
JAMES MULLEN  
Counsel for Defendants

Filed Feb. 12, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

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### INSTRUCTION NO. 1 A.

The Court instructs the jury that Baldwin's Revised Statutes of Kentucky (1948) provides as follows:

"Section 336.130

(1) Employees may, free from restraint or coercion by the employers or their agents, associate collectively for self-or-

ganization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare. Employees collectively and individually may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes.

(2) Neither employers or their agents nor employees or associations, organizations or groups of employees shall engage or be permitted to engage in unfair or illegal acts or practices or resort to violence, intimidation, threats or coercion."

H. F. S.

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#### INSTRUCTION NO. 1 B.

The Court instructs the jury that the Revised Statutes of Kentucky provides:

"437.110 *Conspiracy: banding together for unlawful purpose.*

(1) No two or more persons shall confederate or band themselves together and go forth for the purpose of intimidating, alarming, disturbing or injuring any person, or of taking any person charged with a public offense from lawful custody with the view of inflicting punishment on him or of preventing his prosecution, or of doing any felonious act."

H. F. S.

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#### INSTRUCTION NO. 2.

The Court instructs the jury the plaintiff had the right to employ and work men at its job site in Breathitt County, Kentucky, who were not members of United Construction Workers Division of District 50, United Mine Workers of America, or District 50, United Mine Workers of America, or

United Mine Workers of America without threats of violence or acts of violence against such men, or intimidation of such men by anyone to induce such men to join United Construction Workers.

H. F. S.

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### INSTRUCTION NO. 3.

The Court instructs the jury that United Construction Workers is a division of District 50 and that District 50 is one of the districts of United Mine Workers of America.

H. F. S.

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### INSTRUCTION NO. 4.

The Court instructs the jury that a labor union can act only through its officers and agents, and it is responsible for the acts in its officers and agents done within the scope of their authority or employment. An agent is one who by the authority of his principal transacts his principal's business or some part of it, and represents his principal in dealing with third persons.

It is admitted that William O. Hart and David Hunter were agents of United Construction Workers Division of District 50, United Mine Workers of America, and of District 50, United Mine Workers of America, at all times involved in this case; but it is for you to say whether they were then also agents of United Mine Workers of America, and whether during that period of time they committed the acts charged against them within the scope of their agency for United Construction Workers, or District 50, or United Mine Workers of America, or all of them.

H. F. S.

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## INSTRUCTION NO. 5.

The Court instructs the jury if you believe from the evidence that United Mine Workers of America was using United Construction Workers Division of District 50, United Mine Workers of America, and District 50, United Mine Workers of America, as agents for the purpose of organizing the unorganized in businesses other than the coal mining business, then United Mine Workers of America is liable for any wrongful acts of the agents and employees of United Construction Workers Division of District 50, United Mine Workers of America, and District 50, United Mine Workers of America, while those agents were acting in the line and scope of their employment for the purpose of organizing the unorganized.

H. F. S.

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## INSTRUCTION NO. 5-A.

The Court instructs the jury if you believe from the evidence that William O. Hart, as a representative of District 50, United Mine Workers of America, and of United Construction Workers, Division of District 50, United Mine Workers of America, while acting within the scope of his employment or authority, went to plaintiff's job site in Breathitt County, Kentucky, on July 26, 1949, with a disorderly crowd of men and for the purpose of organizing plaintiff's employees, and that, by intimidation, threats, acts of violence or coercion, said Hart and his crowd of men caused plaintiff's workmen to leave their job, and put them in such fear as to cause them to refuse to return to work thereafter, then you will find for the plaintiff against the two defendants, District 50, United Mine Workers of America, and United Construction Workers, division of District 50, United Mine Workers of America, and assess plaintiff's damages in accordance with the instructions on damages.

And if you further believe from the evidence that William O. Hart, as a representative of District 50, United Mine Workers of America, and of United Construction Workers, division of District 50, United Mine Workers of America, while acting within the scope of his employment or authority, went to plaintiff's

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job site in Breathitt County, Kentucky, on July 26, 1949, with a disorderly crowd of men and for the purpose of organizing plaintiff's employees, and that, by intimidation, threats, acts of violence or coercion, said Hart and his crowd of men caused plaintiff's workmen to leave their job, and put them in such fear as to cause them to refuse to return to work thereafter, and that at that time District 50, United Mine Workers of America, and United Construction Workers, Division of District 50, United Mine Workers of America, or either of them, were agents of United Mine Workers of America for the purpose of organizing workers in businesses other than the coal mining business, then you shall also find for the plaintiff against the defendant, United Mine Workers of America, and assess the plaintiff's damages in accordance with instructions on damages.

II. F. S.

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INSTRUCTION NO. 7.

The Court instructs the jury that while employees may, free from restraint or coercion by employers of their agents, associate collectively for self-organization, and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare, and may, collectively and individually, strike, engage in peaceful picketing, and assemble collectively for peaceful purposes, neither employees nor associations, organizations nor groups of employees, have the right to resort to violence, intimidation, threats or coercion.

If you believe from the evidence that William O. Hart, was acting for United Construction Workers Division of District 50, United Mine Workers of America, and for District 50, United Mine Workers of America and for United Mine Workers of America within the scope of his authority, and if you believe from the evidence that while he was so acting he went to plaintiff's job site in Breathitt County, Kentucky, on July 26, 1949, with a disorderly crowd of men, to organize plaintiff's employees, and if you believe from the evidence that he was then acting in furtherance of the business of all three defendants, and if you believe from the evidence that while so acting he, by intimidation, threats, acts of violence, or coercion, caused plaintiff's workmen to leave their job, and put them in such fear

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as to cause them to refuse to return to work thereafter, you will find for the plaintiff against all three defendants and assess plaintiff's damages in accordance with the instructions on damages.

H. F. S.

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INSTRUCTION NO. 8.

The Court instructs the jury if you believe from the evidence (1) that William O Hart was acting within the scope of his authority and employment and was acting for all the defendants for the purpose of "organizing the unorganized", and (2) that in furtherance of that purpose he was going about Eastern Kentucky leading men to various job sites for the purpose of compelling by intimidation, coercion or force the workers on such jobs to join one of the Defendant unions, or failing that, to stop the jobs, and (3) that such activities of Hart were known or reasonably should have been known to the defendants, and (4) that in furtherance of this purpose Hart led men to plaintiff's job site in Breathitt County, for the purpose of compelling the employees of plaintiff to join one of the defendant unions, irrespective of such employees' wishes, and (5) that Hart or others at his direction, by means of threats and intimidation, backed up by overwhelming force, did in fact compel some employees of plaintiff to "sign up" with one of the defendant unions, and forced others to quit work, and (6) that Hart did such acts with utter disregard for the rights of the employees and with utter disregard for the rights of Plaintiff, and with the express and avowed purpose of forcing plaintiff to recognize one of the defendant unions or failing in that, forcing the plaintiff to get out of the territory, then defendants are liable to plaintiff not only for all damages proximately resulting from such action but also for punitive damages if you deem it appropriate to award punitive damages under other instructions of the Court.

H. F. S.

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INSTRUCTION NO. 9.

The Court instructs the jury if you believe from the evidence that the plaintiff is entitled to recover compensatory damages, then in order to determine the amount of such damages you should consider any actual loss to the plaintiff of

(1) Profits under its contract dated December 15, 1948, with Spring Fork Development Company, provided you believe from the evidence that such profits are reasonably certain as defined in other instructions;

(2) Profits the plaintiff might have realized from alleged promised cost plus 5% contracts with Island Creek Coal Company, Pond Creek Pocahontas Company and their associated and subsidiary companies, provided you believe from the evidence that such profits are reasonably certain as defined in other instructions;

(3) Any loss, as defined in other instructions, to plaintiff from destruction of its business connection with Island Creek Coal Company, Pond Creek Pocahontas Company and their associated and subsidiary companies, provided you believe from the evidence such profits are reasonably certain as defined in other instructions; and

(4) Any loss to plaintiff from impairment of plaintiff's business reputation.

And you should return your verdict in such amount of compensatory damages as defined in other instructions on damages as will fairly and fully compensate the plaintiff for any of the aforesaid losses the plaintiff has actually sustained as a proximate result of the wrong acts of the defendants or any of them

H. F. S.

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INSTRUCTION NO. 10.

The Court instructs the jury that damages recoverable in actions like this, in the event plaintiff is entitled to recover, are of two kinds: (1) compensatory damages, and, (2) punitive damages.

(1) Compensatory damages are the measure of the loss or injury sustained and may embrace pecuniary loss suffered by the plaintiff, if any; a fair compensation to the plaintiff for destruction of the plaintiff's business connection with Island Creek Coal Company, Pond Creek Pocahontas Com-



pany and their subsidiaries or associates, if shown by the evidence; and the profits which the plaintiff would have gained by a continuation of its business relationship with the several corporations with whom it had established business relations, if any. But only such profits may be recovered as can be ascertained with reasonable certainty. The fact that such profits may be involved in some uncertainty and contingency and can be determined only approximately upon reasonable conjectures and probable estimates does not necessarily mean that they cannot be recovered at all. If it is certain that substantial damage has been caused by the acts of the defendants and the uncertainty is not whether there have been damages, but only an uncertainty as to their true amount, then the jury may not refuse all compensatory damages merely because of that uncertainty.

The plaintiff has a right to prove the nature of his his relationship with the coal companies, the circumstances surrounding the acts of the defendants, and the proximate consequences naturally and directly traceable thereto. If and when that is done, it is for the jury to determine the amount of compensatory damages to be awarded the plaintiff. The fact that such compensatory damages cannot be computed with any exactness is not a sufficient reason for refusing to award any compensatory damages, provided there is a sufficient foundation for a rational conclusion.

(2) Punitive damages may be given in the discretion of the jury, not solely as compensation, but rather with a view to the enormity of the offense to punish the defendant and thus make an example of him so that others may be deterred from committing similar offenses. Punitive damages may be given in the discretion of the jury where a wrongful act has been accompanied with circumstances of aggravation, or committed in a high-handed and threatening manner, or maliciously and with a design of injuring plaintiff in its business, or where the wrongful act is accompanied by insult, indignity, oppression, or threats, or where the wrongful act is committed in a manner so wanton or reckless as to manifest a wilful disregard for the rights of others. In all such cases, the jury may assess the damages at any sum which you may believe from all of evidence, in the exercise of sound discretion, the plaintiff ought to recover, not exceeding the amount claimed. If you should find that the plaintiff is entitled to both compensatory and punitive damages, you should find each class of damages separately; that is to say, you should award compensatory damages in one amount and punitive damages in another amount. Punitive damages need not necessarily bear any relation to the dam-

ages allowed by way of compensation, but punitive damages must bear some relation to the injury and the cause thereof.

In order that the plaintiff may recover damages in this case, whether compensatory or punitive, or both, it is not necessary to prove the acts complained of were either expressly authorized or expressly ratified by those for whom Hart was acting if you believe from the evidence that the acts complained of were committed by Hart within the scope of his employment in the performance of a duty to his principals to organize the unorganized. If, in doing any acts which he was authorized to do, he did them in such a manner as to render him liable, his principals are likewise liable, although they did not expressly authorize the acts to be done in the manner in which they were done, and did not expressly ratify the manner in which the acts were done.

H. F. S.

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INSTRUCTION "A"

The jury is instructed that:

Since the events complained of are alleged to have taken place in the State of Kentucky, the law of that state determines the substantive rights of the parties in this case.

H. F. S.

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INSTRUCTION "B"

The jury is instructed that:

The burden is upon the plaintiff to prove by a preponderance of the evidence all facts necessary to constitute a claim for damages against the defendants. And you may consider a fact established by the greater weight of the evidence as being proven by a preponderance of the evidence, but a greater number of witnesses for the proof of a fact does not necessarily constitute a preponderance of the evidence.

H. F. S.

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INSTRUCTION "C"

The jury is instructed that:

The plaintiff's common laborers and carpenter helpers had the right, free from restraint or coercion by the plaintiff or

its agents, to associate for self-organization; to designate collectively representatives of their own choosing; to negotiate the terms and conditions of their employment, all for the purpose of effectively promoting their own rights and welfare. Such employees, collectively or individually, had the right to strike, to engage in peaceful picketing, and to assemble peaceably.

In the exercise of the above rights such employees had the right to interfere with the plaintiff's business without being liable in damages for such interference.

The above rights are not lost because others who are not employees of the plaintiff join with them in asserting the employees' rights.

Minor disorders and trivial rough incidents on a picket line, not serious enough to intimidate or coerce a man of ordinary strength of character, do not deprive the picketing of its peaceful character.

H. F. S.

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#### INSTRUCTION "D"

The jury is instructed that:

In Kentucky the employees of the plaintiff, including common laborers and carpenter helpers, had the right to organize to promote their mutual advantage, to secure fair wages, to secure better working conditions, to secure better hours, to induce plaintiff to establish usages with respect to wages and working conditions which are fair, reasonable, and humane, and to achieve the fundamental right to contract collectively with the plaintiff, Laburnum Construction Corporation.

To accomplish these legitimate ends, employees of the plaintiff, including common laborers and carpenter helpers, may strike, may indulge in peaceful picketing, may use any peaceful means not partaking of fraud to induce others to become members; may acquaint the public with facts which it regards as unfair, publicize its cause, and use persuasive inducements to bring its own policies to triumph. When engaged in a lawful strike its members may join in a crowd to persuade other men who propose to work not to take their places. Its members have a lawful right to assemble, to address their fellow-men, and endeavor in peaceful, reasonable, and proper manner to persuade them regarding the merits of their cause and to enlist sympathy, support, and succor in the struggle for the legitimate labor ends, and finally its members may assemble and agree to pursue, and pursue any legal means to

gain their ends, that is, use persuasive powers in a peaceful way.

H. F. S.

page 277 } INSTRUCTION "E"

The jury is instructed that:

If you find from the evidence that the plaintiff's employees refused to work for it solely because of the existence of a peaceful picket line and that they would have worked if there had been no picket line, your verdict must be for the defendants.

H. F. S.

page 278 } INSTRUCTION "F-1"

The jury is instructed that:

Under the law the plaintiff's common laborers and carpenter helpers had a right to organize for the purpose of bargaining collectively with the plaintiff. If you believe that the plaintiff restrained or coerced such employees in the exercise of these rights, then the plaintiff acted unlawfully.

H. F. S.

page 279 } INSTRUCTION "J"

The jury is instructed that:

A part of the plaintiff's claim for damages is based on the loss of future profits which it alleges it would have earned but for the wrongful acts of one or more of the defendants. In this connection you shall be governed by the following:

(a) No damages can be awarded against any defendant unless you first find as a fact from the evidence that the plaintiff is entitled to recover against that defendant.

(b) No damages can be awarded unless you also find that the damages were directly and proximately caused by the alleged wrongful acts of one or more of the defendants.

(c) The damages claimed by the plaintiff must be capable of being ascertained with reasonable certainty. Remote, speculative or contingent damages are not recoverable.

(d) The plaintiff has the burden of proving with reasonable certainty the profits that it claims as damages. If you cannot determine profits from the evidence with reasonable certainty, then you cannot award any damages based on the profits the plaintiff claims it would have earned.

(e) If you believe from the evidence that the profits, if any, of Virginia Mechanical Corporation should not be included in the profits, if any, of the plaintiff then you must deduct such profits, if any, from the plaintiff's claim.

H. F. S.

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INSTRUCTION "M"

The jury is instructed that:

The plaintiff claims damage by reason of the alleged destruction of the business relationship which it had formed with Pond Creek Pocahontas Company, Island Creek Coal Company and their associated and subsidiary companies. You cannot allow this item of damages, unless you find as a fact from the evidence that such destruction of the business relationship occurred prior to November 16, 1949, or was caused by the wrongful conduct of one of the defendants which conduct took place prior to that date.

H. F. S.

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INSTRUCTION "O-2"

The jury is instructed that:

If you believe from the evidence in this case that none of the defendants, or any of their respective agents acting within the scope of their authority, have acted wantonly, recklessly, or oppressively, or with sufficient malice as implies a spirit of mischief or criminal indifference to civil obligations, you cannot award plaintiff any punitive damages in this case, and if you should find for the plaintiff, its recovery shall be limited to compensatory damages only.

H. F. S.

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INSTRUCTION "P"

The jury is instructed that:

If W. O. Hart and the men associated with him on the occasions complained of acted solely for the purpose of enforcing their legal rights in a lawful manner, and not for the purpose of injuring the plaintiff, no exemplary or punitive damages can be awarded plaintiff against any of the defendants.

H. F. S.

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INSTRUCTION "R"

The jury is instructed that:

None of the defendants is legally responsible or liable to plaintiff for any fears of any of its employees which were generated by the alleged reputation for violence of Breathitt County, Kentucky.

H. F. S.

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INSTRUCTION "S"

The jury is instructed that:

Any evidence introduced on behalf of plaintiff to the effect that any of the defendants has a bad reputation for failing to abide by the law in Eastern Kentucky is not to be considered as evidence that the defendants committed the specific wrongful acts alleged by the plaintiff.

H. F. S.

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INSTRUCTION NO. 1.

The Court instructs the jury it is unlawful to coerce, threaten or intimidate employees and thereby interrupt or destroy an employer's business. The law affords no protec-

tion for "striking" or "picketing" carried on by means of coercion, threats or intimidation.

Refused.

H. F. S.

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DEFENDANTS A.

The jury is instructed that:

Since the events complained of are alleged to have taken place in the State of Kentucky, the law of that state determines the substantive rights of the parties in this case, and the law of Kentucky includes the Constitution of the United States, the applicable Federal laws, the statutes of Kentucky and the decisions of the court of last resort of Kentucky.

Refused.

H. F. S.

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DEFENDANTS G.

The jury is instructed that:

None of the defendants can be held responsible or liable for any unlawful acts of individual officers, members or agents except on clear proof of actual participation in, or actual authorization of, such acts or of ratification of such acts after actual knowledge thereof.

Refused.

H. F. S.

page 288 }

DEFENDANTS H.

The jury is instructed that:

The defendants are not liable for any wrongful conduct of individuals unless they authorized, instructed or ratified that conduct. And no defendant is liable for the conduct of either of the other defendants unless it authorized, instructed or ratified that conduct. You cannot consider the declarations or



writings of any individuals to establish the fact of authorization, instruction or ratification of his conduct.

Refused.

H. F. S.

page 289 }

DEFENDANTS I.

The jury is instructed that:

Neither the defendants nor any one of them can be held liable for any acts that may have been done unless it be clearly shown that what was done was done by their agents in accordance with their fundamental agreement of association, that is to say of their constitution.

Refused.

H. F. S.

page 290 }

DEFENDANTS J.

The jury is instructed that:

A part of the plaintiff's claim for damages is based on the loss of future profits which it alleges it would have earned but for the wrongful acts of one or more of the defendants. In this connection you shall be governed by the following:

(a) No damages can be awarded against any defendant unless you first find as a fact from the evidence that the plaintiff was wronged by the acts of that defendant.

(b) No damages can be awarded unless you also find that the plaintiff was actually damaged; that the damage was directly and proximately caused by the alleged wrongful acts of one or more of the defendants, and that such damage was intended by one or more of the defendants or could reasonably have been foreseen as a result of its wrongful conduct.

(c) The damages claimed by the plaintiff must be capable of being ascertained with reasonable certainty. Remote, speculative or contingent damages are not recoverable.

(d) The plaintiff has the burden of proving with reasonable certainty the net profits that it claims as damages. From its gross profits must be deducted all expenses of every kind (including taxes other than income taxes) properly chargeable to the earning of such gross profit. If you cannot deter-

mine from the evidence with reasonable certainty such deductions, then you cannot determine with reasonable certainty the plaintiffs net profits and you cannot award any damages based on the net profits the plaintiff claims it would have earned.

page 291 } (e) If you believe that Virginia Mechanical Corporation would have done any part of the work for which the plaintiff is claiming damages, you must from the evidence determine with reasonable certainty the part of such work that Virginia Mechanical Corporation would have done and deduct such part from the plaintiff's claim. If you cannot do so, you cannot award any damages based on work the plaintiff claims it would have done.

(f) There is no evidence that the plaintiff had a reasonably assured gross earning capacity in Kentucky and West Virginia upon which you can award damages for future earnings based upon a gross profit of cost plus 5%.

(g) If you find that one or more of the defendants is liable to the plaintiff for damages, the plaintiff is entitled to recover from such defendant only the damage caused by the wrongful conduct of that defendant, unless you also find from the evidence that the defendants acted in concert to injure the plaintiff.

Refused.

H. F. S.

Defendants offered another instruction designated "J" which was granted.

H. F. S.

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DEFENDANTS K.

The jury is instructed that:

The mere expectancy of a contract is not sufficient to justify recovery of alleged loss of profits therefrom. The plaintiff claims damages in the amount of \$27,125.00 representing the loss of gross profits in connection with approximately \$542,500.00 worth of work on a basis of cost plus a fee of 5% which the plaintiff claims Mr. Salvati had agreed to have the plaintiff perform. If you find that the defendants committed the acts complained of, and you further find that the plaintiff did not have an enforceable contract for this work, you cannot consider it as an item of damages.

If you believe that the work which the plaintiff claims would have been awarded to it has not been done or any part thereof has not been done, then you may not award damages with respect to any of such work which has not been done.

If you believe that any part of this work was let on bids, and if you further believe the plaintiff would have been awarded this work if it had bid on it and been the low bidder, then the plaintiff is not entitled to recover any damages for this item.

Refused.

H. F. S.

page 293 }

DEFENDANTS L.

The jury is instructed that :

The plaintiff claims damage in the amount of \$120,000.00 by reason of the alleged destruction of the business relationship which it had formed with Pond Creek Pocahontas Coal Company, Island Creek Coal Company, and their associate and subsidiary companies, but the plaintiff has introduced no evidence of the alleged destruction of this business relationship and you cannot allow any recovery of damage for such destruction.

Refused.

H. F. S.

page 294 }

DEFENDANTS N.

The jury is instructed that :

The plaintiff claims that its reputation has been damaged in the amount of \$100,000.00, but plaintiff has introduced no evidence of any damage to its reputation, and you cannot allow any recovery for damage to reputation.

Refused.

H. F. S.

page 295 }

DEFENDANTS O.

The jury is instructed that :

There is no evidence in this case that any of the defendants have acted wantonly, recklessly, or oppressively, or with sufficient malice as implies a spirit of mischief or criminal indifference to civil obligations, and therefore you cannot award plaintiff any punitive damages in this case, and if you should find for the plaintiff, its recovery shall be limited to compensatory damages only.

Refused.

H. F. S.

page 296 }

DEFENDANTS O-1.

The jury is instructed that :

If you believe from the evidence in this case that none of the defendants have acted wantonly, recklessly, or oppressively, or with sufficient malice as implies a spirit of mischief or criminal indifference to civil obligations, you cannot award plaintiff any punitive damages in this case, and if you should find for the plaintiff, its recovery shall be limited to compensatory damages only.

Refused.

H. F. S.

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DEFENDANTS Q.

The jury is instructed that :

Any wanton, reckless or oppressive conduct of Hart or any person with him on the occasions complained of cannot be imputed to any of the defendants so as to authorize the award of any punitive damages against any of the defendants in the event you find for the plaintiff.

Refused.

H. F. S.

page 298 }

. . . . .

Virginia:

In the Circuit Court of the City of Richmond, Saturday, the  
17th day of February, 1951.

. . . . .

This day came again the plaintiff and defendants, by counsel, and the jury sworn in this case again appeared in accordance with their adjournment on yesterday and having further consulted of a verdict, returned into Court with a verdict in the words and figures following, to-wit: "We, the Jury, on the issues joined, find for the plaintiff against all three defendants jointly and severally, and assess plaintiff's damages at \$275,437.19, representing \$175,437.19 compensatory damages, and \$100,000 punitive damages."

Thereupon the defendants, by counsel, moved the Court to withhold entering judgment on the verdict for a period of two weeks in order to give the defendants time to confer with its counsel in connection with any motions that it might desire to make as to the verdict; which motion the Court granted and the entry of judgment on the verdict of the jury is withheld until the further order of the Court.

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Virginia:

In the Circuit Court of the City of Richmond, Thursday, the  
1st day of March, 1951.

. . . . .

This day came again the plaintiff and defendants, by counsel, and thereupon the defendants, by counsel, filed herein their motion in writing to set aside the verdict of the jury heretofore rendered in this case, together with the grounds thereof; which motion the Court continued for argument to be heard thereon.

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. . . . .

Filed Mar. 1, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.MOTION TO SET VERDICT ASIDE AND GRANT  
NEW TRIAL.

Now come the defendants jointly and severally and move the Court to set aside the jury's verdict as contrary to the law and the evidence and to grant a new trial, and as grounds for their motion assign the following:

(1) The refusal of the Court to instruct the jury as requested by defendants, and particularly the refusal of the Court to grant defendants' instructions A, G, H, I, J, K, L, N, O, O-1, and Q.

(2) The granting by the Court of plaintiff's requested instructions to which objections and exceptions were noted by the defendants.

(3) The granting by the Court of modified instructions to which the defendants objected and excepted.

(4) The failure of the Court to exclude from the consideration and hearing of the jury hearsay evidence of acts and transactions introduced through plaintiff's witnesses, which evidence was objected to and excepted to by the defendants.

(5) The action of the Court over the objections and exceptions of the defendants in permitting the plaintiff to introduce into evidence as exhibits the interrogatories addressed by the plaintiff to the three defendants and the answers thereto made by the defendants.

(6) The action of the Court over the objections and exceptions of the defendants in permitting the plaintiff to read to the jury such portions as it selected of plaintiff's interrogatories addressed to the defendants and defendants' answers thereto.

(7) The action of the Court over the objections and exceptions of the defendants in requiring defendants to furnish writings in their possession as answer to interrogatories propounded to them by plaintiff in absence of compliance by plaintiff with the provisions of Section 8-324, Code of Virginia.

(8) The action of the Court over the objections and exceptions of the defendants in compelling defendants ~~under~~ Section 8-321, Code of Virginia, to answer interrogatories propounded to them by plaintiff, which said interrogatories and answers were not relevant.

(9) The action of the Court over the objections and exceptions of the defendants in failing to require plaintiff's witness to testify concerning income taxes of Laburnum Construction Corporation for the State of Kentucky.

(10) The failure of the Court over the objections and exceptions of the defendants to exclude evidence introduced by plaintiff of profits claimed by Laburnum Construction Corporation which were made by Virginia Mechanical Corporation.

page 302 } (11) The persistent improper conduct of counsel for plaintiff in making prejudicial and inflammatory remarks in the presence and hearing of the jury during the taking of evidence at the trial of the case, and during the argument of the case to the jury.

(12) The defendants renew in this motion to set the jury's verdict aside their motion made on January 29, 1951, for a mistrial on the grounds of prejudicial and inflammatory remarks made by counsel for plaintiff and similar remarks made by plaintiff's witness A. Hamilton Bryan, and further renew their said motion for mistrial upon the ground of further prejudicial and inflammatory statements made by counsel for plaintiff during the remainder of the trial.

(13) The appearance of a highly prejudicial and inflammatory editorial in the newspaper "Richmond News Leader" on February 13, 1951, entitled "Enemies of the Miner?"

(14) The defendants in this motion to set the verdict aside renew their motion for mistrial made on February 14, 1951, upon the ground of the appearance of the prejudicial and inflammatory editorial in the newspaper "Richmond News Leader" on February 13, 1951, entitled "Enemies of the Miner?"

(15) The amount of the jury's verdict for compensatory damages is excessive by reason of the fact that the jury has permitted itself to be actuated by partiality, sympathy, bias, prejudice and passion.

(16) The amount of the jury's verdict for compensatory damages is excessive for the reason that the jury has misconceived the case insofar as the elements of damages are concerned and taken into consideration improper elements of compensatory damages.

page 303 } (17) The amount of the jury's verdict for punitive damages is excessive for the reason that the



jury has permitted itself to be actuated by partiality, sympathy, bias, prejudice and passion.

(18) The misconduct of the jury in taking into consideration improper matters not in the record in arriving at a verdict, namely, the tax situation in the event of a recovery by the plaintiff.

(19) The verdict constitutes a denial to the defendants of the exercise of rights granted by the Constitution and laws of the United States, including the Norris-LaGuardia Act, 29 U. S. C. A. Sections 101-110, 113-115, the Clayton Act 15 U. S. C. A. Sections 12-13, 14-21, 22-27, 44; 29 U. S. C. A. Section 52, and the Labor Management Relations Act of 1947, 29 U. S. C. A. Sections 141-197.

(20) The verdict deprives the defendants of liberty and property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(21) The verdict constitutes a denial to the defendants of the exercise of rights granted to them by the First Amendment to the Constitution of the United States.

(22) The action of the Court over the objections and exceptions of the defendants in requiring the defendants to answer certain interrogatories propounded to them by the plaintiff constituting an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States.

(23) The action of the Court over the objections and exceptions of the defendants in admitting evidence of other acts allegedly committed by the defendants introduced page 304 } by plaintiff for the purpose of showing a course of conduct by the defendants.

(24) The action of the Court in failing to exclude evidence and testimony to which defendants objected and excepted during the course of the trial.

(25) The verdict of the jury that the defendants are jointly and severally liable to plaintiff is contrary to the evidence and without evidence to support it.

UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA; DISTRICT  
50, UNITED MINE WORKERS OF  
AMERICA; AND UNITED MINE  
WORKERS OF AMERICA

By JAMES MULLEN

Of Counsel

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MOTION TO DISMISS NOTICE OF MOTION FOR JUDG-  
MENT AND FOR ENTRY OF JUDGMENT FOR  
DEFENDANTS, AND EACH OF THEM.

Now come the defendants jointly and severally and move the Court to enter judgment for the defendants, and each of them, and to dismiss the plaintiff's Notice of Motion for Judgment, and assign the following ground in support thereof:

1. The Court is without power, authority and jurisdiction to hear and determine the issues in this action because such determination would be repugnant to and in violation of the Labor Management Relations Act, 1947, (61 Stat. 136, c. 120, Sections 1, *et seq.*, Public Law 101) and to Article I, Section 8, of the Constitution of the United States.

UNITED CONSTRUCTION WORKERS,  
AFFILIATED WITH UNITED MINE  
WORKERS OF AMERICA; DISTRICT  
50, UNITED MINE WORKERS OF  
AMERICA; AND UNITED MINE  
WORKERS OF AMERICA.

By JAMES MULLEN

WILLARD P. OWEN and  
M. E. BOIARSKY  
of Counsel for defendants

Received and filed Apr. 30, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

. . . . .

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. . . . .

Received and filed Jun. 27, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

Gentlemen:

After due consideration of the motion of the defendants, jointly and severally, filed March 1, 1951, to set aside the jury's verdict as contrary to the law and the evidence and to grant a new trial, the motion of the defendants, jointly and severally, filed April 30, 1951, to dismiss the plaintiff's notice of motion for judgment and for entry of judgment for the defendants, alleging the court is without power, page 316 } authority and jurisdiction to hear and determine the issues in this action, the oral argument and memoranda submitted by counsel, the court is of opinion that both of said motions should be overruled and that judgment should be entered on the verdict of the jury.

Upon presentation of a proper order, same will be entered.

Yours very truly,

JUDGE.

s/s

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page 318 } Virginia:

In the Circuit Court of the City of Richmond.

Jul. 5, 1951

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# JUDGMENT FOR PLAINTIFF UPON VERDICT AFTER MOTION TO SET SAME ASIDE.

THIS DAY came again the parties by counsel and the court, having maturely considered the motion of the defendants heretofore made to set aside the verdict of the jury and to grant them a new trial and the motion of the defendants to dismiss the plaintiff's notice of motion for judgment and enter final judgment for the defendants, is of opinion to overrule both motions and accordingly said motions are overruled upon each and every ground offered in support thereof; to which actions and rulings of the court the defendants by counsel excepted.

It is, therefore, ADJUDGED and ORDERED that the plaintiff, Laburnum Construction Corporation, recover of the

defendants, United Construction Workers Affiliated with United Mine Workers of America; District 50, United Mine Workers of America; and United Mine Workers of America, jointly and severally, the sum of \$275,437.19, the amount of the damages by the jury in its verdict awarded, with interest thereon at the rate of 6% per annum from the 17th day of February, 1951, the date said verdict was returned, until paid, together with the plaintiff's costs by it about its action herein expended.

The defendants having indicated their intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment of the court herein pronounced, it is ORDERED that execution upon page 319 } this judgment be suspended until such petition shall have been acted on by the Supreme Court of Appeals of Virginia, or until the time for presenting such petition shall have expired, upon condition, however, that within ten days from the entry of this order the defendants, or one of them, or someone for them, enter into a bond in the penalty of \$325,000.00 in the clerk's office of this court, with surety to be approved by the clerk, which bond shall contain all the conditions prescribed in Section 8-477 of the Code of Virginia as amended, and shall be a bond conditioned as required for a *supersedeas* bond, according to law.

We ask for entry of the foregoing judgment.

ARCHIBALD G. ROBERTSON  
GEO. E. ALLEN  
T. JUSTIN MOORE, JR.

We object to and except to the entry of this order:

JAMES MULLEN  
WILLARD P. OWEN  
FRED G. POLLARD  
of Counsel for Defendants

Enter.

HAROLD F. SNEAD

7/5/51.

. . . . .

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## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Pursuant to Rule 5:1, Section 4, of the Rules of Supreme Court of Appeals of Virginia, the defendants, United Construction Workers, Affiliated With United Mine Workers of America, District 50 United Mine Workers of America, and United Mine Workers of America, and each of them, hereby give notice of appeal from the final judgment entered in the above case on July 5, 1951, wherein the Circuit Court of the City of Richmond ordered that the plaintiff, Laburnum Construction Corporation, recover of said defendants, jointly and severally, the sum of \$275,437.19, with interest and costs, and of their intention to apply for a writ of error and *superseas* in said case and also that they, and each of them, intend to rely upon the following assignments of error:

1. The Trial Court erred in refusing to sustain and in overruling the defendants' motion to dismiss the plaintiff's notice of motion for judgment and to enter final judgment for the defendants on the ground that the Court was without power, authority and jurisdiction to hear and determine the issues in this action because of the provisions of the Labor-  
page 322 } Management Relations Act, 1947 (61 Stat. 136, C. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8, of the Constitution of the United States. The Trial Court's action was repugnant to, and in violation of, said statutory and constitutional provisions.

2. The Trial Court erred in entering the judgment of July 5, 1951, on the verdict of the jury, that the plaintiff recover of the defendants, jointly and severally, the sum of \$275,437.19, with interest and costs, because the Trial Court was without power, authority and jurisdiction to enter said judgment because of the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, C. 120, Sections 1 *et seq.*, Public Law 101) and Article I, Section 8, of the Constitution of the United States, and said judgment is void because it is repugnant to, and in violation of, said statutory and constitutional provisions.

3. The Trial Court erred in requiring the defendants, over their objections and exceptions, to answer the various interrogatories propounded to them by the plaintiff and to furnish certain writings in their possession as answers to such interrogatories for the reason that such action constituted an un-

reasonable and unconstitutional search and seizure, and in requiring defendants, in the absence of compliance by the plaintiff with the provisions of Section 8-324 of the Code of Virginia to furnish answers to interrogatories which were not relevant or material to the issues of this case, contrary to Section 8-321, Code of Virginia.

4. The Trial Court erred in requiring the defendants, over defendants' objections and exceptions, to answer certain interrogatories propounded to them by the plaintiff and such actions of the Trial Court constituted an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States.

page 323 } 5. The Trial Court erred in requiring defendant United Construction Workers, Affiliated With United Mine Workers of America, over said defendant's objections and exceptions, to answer the Interrogatories addressed to it by plaintiff in Interrogatories (2), Further Interrogatories (5), Further Interrogatories (8), Further Interrogatories (11), and Further Interrogatories (14).

6. The Trial Court erred in requiring defendant District 50, United Mine Workers of America, over said defendant's objections and exceptions, to answer the Interrogatories addressed to it by plaintiff in Interrogatories (3), Further Interrogatories (6), Further Interrogatories (9), Further Interrogatories (12), and Further Interrogatories (15).

7. The Trial Court erred in requiring the defendant United Mine Workers of America, over its objections and exceptions, to answer the Interrogatories addressed to it by the plaintiff in Interrogatories (4), Further Interrogatories (7), Further Interrogatories (10), Further Interrogatories (13), and Further Interrogatories (16).

8. The Trial Court erred in requiring the defendant United Construction Workers, Affiliated With United Mine Workers of America, over its objections and exceptions, to answer the following specific questions propounded to it by the plaintiff in Interrogatories, either as stated in said interrogatories or as reframed and stated in the order entitled "Order on Interrogatories", entered on November 28, 1950, or as reframed or directed by the Court in pre-trial conferences, to-wit: questions 1 through 83, both inclusive, 87 through 89, both inclusive, 92 through 94, both inclusive, of Interrogatories (2); questions 3 and 4 of Further Interrogatories (5); questions 87, 88, and 89 of Further Interrogatories (8); questions 1 through 7, both inclusive, of Further Interrogatories (11); and questions 1, 2, and 3 of Further Interrogatories (14).

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9. The Trial Court erred in requiring the Defendant District 50, United Mine Workers of America, over its objections and exceptions, to answer the following specific questions propounded to it by the plaintiff, in Interrogatories, either as stated in said interrogatories or as reframed and stated in the order entitled "Order on Interrogatories", entered on November 28, 1950, or as reframed or directed by the Court in pretrial conferences, to-wit: questions 1 through 85, both inclusive, 88 through 91, both inclusive, 94, 95 and 96 of Interrogatories (3); questions 3 and 4 of Further Interrogatories (6); questions 89, 90 and 91 of Further Interrogatories (9); questions 1 through 7, both inclusive, of Further Interrogatories (12); question 86 of Interrogatories (2) addressed by the plaintiff to United Construction Workers, Affiliated With United Mine Workers of America; and questions 1 through 4, both inclusive, of Further Interrogatories (15).

10. The Trial Court erred in requiring the Defendant United Mine Workers of America, over its objections and exceptions, to answer the following specific questions propounded to it by the plaintiff in interrogatories, either as stated in said interrogatories, or as reframed and stated in the order entitled "Order on Interrogatories", entered on November 28, 1950, or as reframed or directed by the Court in pre-trial conferences, to-wit: questions 1 through 77, both inclusive, 79 through 122, both inclusive, and 125 of Interrogatories (4); questions 3 and 4 of Further Interrogatories (7); questions 118 through 122, both inclusive, of Further Interrogatories (10); questions 1 through 7, both inclusive, of Further Interrogatories (13); questions 1 page 325 } through 9, both inclusive, in Further Interrogatories (16); questions 86 and 87 of Interrogatories (3) addressed by the plaintiff to District 50, United Mine Workers of America; and questions 84 and 85 of Interrogatories (2) addressed by the plaintiff to United Construction Workers, Affiliated With United Mine Workers of America.

11. The Trial Court erred in permitting, over the objections and exceptions of the defendants, the plaintiff to introduce into evidence as exhibits (plaintiff's exhibits 58-2 through 58-16, both inclusive), the interrogatories addressed by the plaintiff to the three defendants and the defendants' answers thereto (plaintiff's exhibits 59-1, 59-1-A, 59-1-B, 59-2, 59-2-A, 59-2-B, 59-3, 59-3-A, 59-3-B, 59-4, 59-5, 59-6, and 59-7, including the two booklets and pamphlets mentioned and described on pages 1227 and 1228 of the Transcript of Proceedings).

12. The Trial Court erred in permitting the plaintiff, over the objections and exceptions of the defendants, to read to the



jury only such portions of the several interrogatories addressed to the respective defendants (as shown by plaintiff's exhibits 58-2 through 58-16, both inclusive, or as reframed by the Court) and the defendants' answers thereto (plaintiff's exhibits 59-1, 59-1-A, 59-1-B, 59-2, 59-2-A, 59-2-B, 59-3, 59-3-A, 59-3-B, 59-4, 59-5, 59-6, and 59-7, including the two booklets and pamphlets mentioned and described on pages 1227 and 1228 of the Transcript of Proceedings) or portions of said answers thereto, as were selected by the plaintiff.

13. The Trial Court erred in permitting, over the objections and exceptions of the defendants, the plaintiff to read to the jury from Interrogatories (2) propounded by the plaintiff to United Construction Workers, Affiliated With United Mine Workers, questions numbered 5, 6, 7, 8, 15 as reframed, 18, 19, 20, 21, 25, 27, 32, 33, 35, 36, 37, 44, 47, 48, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, page 326 } 73, 74, 75, 76, 77, 82 and 83, and to read to the jury the answers to said questions including exhibit No. 1 attached to the answer to question 5, and exhibit 3 attached to the answer to question 25, exhibit 4-1, a portion of exhibit 4-6, exhibit 4-8, exhibit 4-9, exhibit 4-17, attached to the answers to question 27, and exhibit 5-16 attached to the answer to question 35, and in permitting plaintiff to read to the jury question 4 from Further Interrogatories (5) propounded to United Construction Workers Affiliated With United Mine Workers and the answer thereto; and in permitting plaintiff to read to the jury question 5 from Further Interrogatories (11) propounded to United Construction Workers Affiliated With United Mine Workers of America and the answer thereto.

14. The Trial Court erred, over the objections and exceptions of the defendants, in permitting the plaintiff to read to the jury three times a letter dated March 23, 1950, from David Hunter, Acting Director, Region 58, to "Mr. A. D. Lewis, Chairman of Organizing Committee, District 50, UMWA and UCW," and entitled "Weekly Report for the Two Weeks Ending March 11-18, 1950" (Tr., pp. 1263-1264, 1293-1294, 1609-1610).

15. The Trial Court erred, over the objections and exceptions of the defendants, in permitting the plaintiff to read to the jury from Interrogatories (3), propounded to District 50, United Mine Workers of America, questions numbered 5, 6, 14 as reframed, 17, 18, 19, 20, 24, 26, 27, 28, 35, 43, 46, 47, 49, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 77, 78, 79, 84 as reframed 85, 86, 87, 89 (as reframed), and 90, and to read to the jury the answers to said questions including exhibit 3,

attached to the answer to question 24, which was page 327 } exhibited to the jury, exhibits 4-1, 4-6, 4-8, 4-17, 4-28 and 5-1 attached to the answer to question 26, exhibit 6 attached to the answer to question 49, and exhibit 8 attached to the answer to question 84, and in permitting the plaintiff to read to the jury question 4 from Further Interrogatories (6) propounded to District 50 United Mine Workers of America and the answer thereto.

16. The Trial Court erred, over the objections and exceptions of the defendants, in permitting the plaintiff to read to the jury from Interrogatories (4), propounded by the plaintiff to defendant United Mine Workers of America questions numbered 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 22, 26, 38, 41, 44, 46, 47, 69, 70, 71, 72, 73, 74, 76, 82 and 83, and to read to the jury the answers to said questions, including copy of the charter of District 50 attached to the answer to question 6, and copy of charter of United Construction Workers Division attached to the answer to question 7, and in permitting the plaintiff to read to the jury question 4 from Further Interrogatories (7) propounded to United Mine Workers of America and the answer thereto.

17. The Trial Court erred, over the objections and exceptions of the defendants, in admitting in the evidence and in permitting plaintiff's witnesses to testify concerning the following exhibits offered by plaintiff: Exhibit 18 (Tr., pp. 213-215, both inclusive), Exhibit 27 (Tr., pp. 357-358), Exhibit 28 (Tr., pp. 358, 359, 360), Exhibit 29 (Tr., p. 361), Exhibit 30 (Tr., pp. 361-362), Exhibit 32 (Tr., pp. 417-420, both inclusive), Exhibit 33 (Tr., pp. 420-421), Exhibit 34 (Tr., pp. 421-424, both inclusive), Exhibit 35 (Tr., pp. 424-425), Exhibit 36 (Tr., pp. 425-426), Exhibit 37 (Tr., pp. 426-428, both inclusive), Exhibit 38 (Tr., pp. 463-464), Exhibit 39 (Tr., p. 464), Exhibit 40 (Tr., pp. 464-465), Exhibit 41 (Tr., pp. 465-466), Exhibit 42 (Tr., p. 468), Exhibit 43 (Tr., pp. 468-469),

Exhibit 45 (Tr., pp. 474), Exhibit 46 (Tr., pp. 476-477), Exhibit 47 (Tr., pp. 477-478), Exhibit 48 (Tr., pp. 478-479), Exhibit 49 (Tr., pp. 479-481, both inclusive), Exhibit 50 (Tr., pp. 481-482), and Exhibit 51 (Tr., pp. 482-484, both inclusive), Exhibit 54 (Tr., pp. 511-512), Exhibit 57, Sub 1 through 16, both inclusive (Tr., p. 587), Exhibit 60 (Tr., pp. 1228-1229), Exhibit 61 (Tr., p. 1229), Exhibit 62-1 through 62-36, both inclusive (Tr., pp. 1229-1234, both inclusive), Exhibit 95-1, 95-2, 95-3, 95-4, 95-5, 95-6, 95-7, 95-8, 95-9, 95-10, 95-11, 95-12 (Tr., pp. 1972-1978, both inclusive), the plaintiff's exhibit entitled "Constitution of the International Union, United Mine Workers of America, Washington, D. C., Adopted at Cincinnati, Ohio on September 19,

1944", with the notation in pen and ink: "UMWA, Ex., answering Int. No. 2," (Tr., pp. 1227- 1228), and plaintiff's exhibit, which is a pamphlet endorsed in pen and ink, "UMWA, Ex., answering Int. No. 2," (Tr., p. 1228).

18. The Trial Court erred, over defendants' objections and exceptions, in admitting in evidence the following exhibits offered by plaintiff; Exhibit 63 (Tr., pp. 1380-1383, both inclusive), Exhibit 64 (Tr., pp. 1384-1387, both inclusive), Exhibit 65 (Tr., pp. 1388-1391, both inclusive), Exhibit 66 (Tr., pp. 1391-1393, both inclusive), Exhibit 67 (Tr., pp. 1393-1396, both inclusive), Exhibit 68 (Tr., pp. 1396-1397), Exhibit 69 (Tr., pp. 1397-1400, both inclusive), Exhibit 70 (Tr., pp. 1400-1402, both inclusive), Exhibit 71 (Tr., pp. 1402, 1403, 1404), Exhibit 72 (Tr., p. 1405), Exhibit 73 (Tr., pp. 1405-1406), Exhibit 74 (Tr., pp. 1407-1408), Exhibit 76 (Tr., pp. 1413-1419, both inclusive), Exhibit 77 (Tr., pp. 1419-1420), Exhibit 78 (Tr., pp. 1420-1421), Exhibit 81 (Tr., pp. 1449-1450), Exhibit 82 (Tr., pp. 1450-1451), Exhibit 83 (Tr., pp. 1451-1455, both inclusive), Exhibit 84 (Tr., pp. 1455-1458, both inclusive), Exhibit 85 (Tr., pp. 1458- 1459), Exhibit 86 (Tr., pp. 1459-1461, both inclusive), Exhibit 87 (Tr., pp. 1462-1464, both inclusive), Exhibit 88 (Tr., pp. 1464-1466, both inclusive), Exhibit 89 (Tr., pp. 1466-1467), and Exhibit 90 (Tr., pp. 1467-1468), and in permitting plaintiff to read to the jury portions of said exhibits appearing on pages 1424-1448, both inclusive, and pages 1471-1487, both inclusive, of page 329 } the Transcript of Proceedings.

19. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 247-248), plaintiff's witness, Bryan, to give hearsay and self-serving testimony concerning conversations between Bryan and plaintiff's superintendent, Delinger (Tr., pp. 247-249, 253-255, all inclusive), and between Bryan and Jack Joinville (Tr., pp. 245-250, both inclusive).

20. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Bryan, to testify that reports came to him that the laborers were going to make application or had made application to become members of the Salversville Carpenter's Local No. 697 (Tr., p. 251), and that the laborers had all decided to join said Local (Tr., p. 252).

21. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 248), plaintiff's witness, Bryan, to give hearsay testimony concerning a conversation between himself and one Haslam (Tr., p. 289).

22. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 296), plaintiff's wit-

ness, Bryan, to give hearsay testimony concerning a report made to him by plaintiff's Chief Clerk Ragan (Tr., p. 260) and concerning a placard which "Ragan had taken down" and delivered to Bryan (Tr., pp. 296-297).

23. The Trial Court erred in permitting (Tr., p. 302), over defendants' objections and exceptions (Tr., pp. 301-302), the hearsay testimony of witness, Bryan, concerning a statement of Bert Preston (Tr., p. 301).

page 330 } 24. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 301-302, 325), plaintiff's witness, Bryan, to give testimony and detail conversations and transactions between himself and others at the special meeting of the Paintsville Carpenter's Local No. 646 on July 26, 1949 (Tr., pp. 299-304, both inclusive), and to testify concerning conversations, acts and transactions at plaintiff's job site on July 27, 1949 (Tr., pp. 304-311, both inclusive).

25. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 310, 325), plaintiff's witness, Bryan, to testify concerning a conversation between himself and Jack Patrick and quoting Patrick as saying "the job was unsafe" and that he had ordered the men back to work (Tr., pp. 309-310) and further quoting Patrick as saying that others had said that "if these men knew what was good for them, they would get out; and if they didn't, there would be 100 men there within an hour to stop them", and quoting others concerning their fears of being shot at with a rifle (Tr., p. 310) and that it was too dangerous to work (Tr., p. 311).

26. The Trial Court erred in permitting, over defendants' objections (Tr., pp. 248, 325) and exceptions, plaintiff's witness, Bryan, to testify concerning a conversation between himself and plaintiff's employees to the effect that they didn't want to be targets and that it was too dangerous to work (Tr., pp. 310-311).

27. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 310, 325), plaintiff's witness, Bryan, to testify concerning a conversation between himself and Homer Howard, a State Trooper (Tr., pp. 312-313).

28. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 310, 315, page 331 } 316, 325), plaintiff's witness, Bryan, to testify concerning a telephone conversation between himself and W. P. Freeman (Tr., pp. 314-315).

29. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 325), plaintiff's wit-

ness, Bryan, to testify concerning a telephone conversation, between himself and plaintiff's Superintendent Delinger about a report to Delinger that his life had been threatened (Tr., pp. 327-328).

30. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 325, 351-352), plaintiff's witness, Bryan, to testify and detail conversations had with persons at the Carpenter Hotel in Salyersville on August 2, 1949 (Tr., pp. 352, 351).

31. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 325), plaintiff's witness, Bryan, to testify to conversations:

- (1) Between himself and Henry Starr (Tr., p. 331);
- (2) Between himself and Charlie Williams (Tr., pp. 337-338);
- (3) Between himself and Robert Poe (Tr., pp. 336-337, 347, 1992);
- (4) Between himself and "representatives of Pond Creek and Island Creek that the situation out in Breathitt County had become so tense that they wanted to stop our work" (Tr., p. 355);
- (5) Between himself and Delinger, and also Ragan, asking that they let him know if United Construction Workers or District 50 "were trying to organize our workers" (Tr., p. 512).

32. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 325, 351, 356), plaintiff's witness, Bryan, to testify and detail a conversation between himself and Louis Veltry (Tr., pp. 355-356, 363-364).

33. The Trial Court erred in permitting, over page 332 } defendants' objections and exceptions (Tr., pp. 393, 406), plaintiff's witness, Bryan, to testify concerning conversation had between himself and Robert Poe about giving his deposition (Tr., pp. 407-410, both inclusive).

34. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 310, 325, 351, 356, 413-414), plaintiff's witness, Bryan, to testify that he had information that United Construction Workers had closed down the job of R. H. Hamill Company and in permitting said witness to testify concerning a conversation between himself and a Mr. Hughes, of the Hamill Company (Tr., pp. 410-414, both inclusive).

35. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 248, 310, 325, 746), plaintiff's witness, Frank Dixon, to testify concerning what took

place at a meeting at Salyersville at which the defendants were not present (Tr., p. 746).

36. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 748, 749, 750), plaintiff's witness, Frank Dixon, to testify concerning a message received by him in a "roundabout way" (Tr., pp. 748-750, both inclusive), and the Trial Court likewise erred in overruling (Tr., p. 763) defendants' motion (Tr., p. 750) to exclude the witness' answer appearing on page 750 of the Transcript of Proceedings, to which rulings defendants excepted (Tr., p. 763).

37. The Trial Court erred in permitting (Tr., p. 765), over defendants' objections and exceptions (Tr., pp. 764, 765), plaintiff's witness, Frank Dixon, to give hearsay testimony that "in a roundabout way the word has been sent on to me by various people that I had better keep my ass out page 333 { of the eastern part of the state" and in refusing defendants' motions (Tr., pp. 766, 767) to exclude such answer (Tr., p. 768), to which ruling defendants excepted (Tr., p. 768).

38. The Trial Court erred in overruling (Tr., p. 768) defendants' motion (Tr., p. 767) to exclude the testimony of plaintiff's witness, Dixon (Tr., pp. 766-767), that "I am trying to refrain from bringing somebody else into this case because bodily harm might come to them by using their name" and "it goes back to the conversation that happened at Ashland, Kentucky and the same thing was brought to me there from the same party, that Mr. Raney had offered to meet with me to make a deal with me, and if we did allow these men in Paintsville to testify I had better keep my ass out of the eastern part of the state".

39. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 768), plaintiff's witness, Dixon, to testify (Tr., pp. 768-769) that "the threat was sent to me again that if I testified and permitted these men in Paintsville, the carpenters in Paintsville to testify, that all the damned water and gravel in the Big Sandy River wasn't going to fill me up if they ever caught me in the eastern part of the State again."

40. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 780), in receiving in evidence plaintiff's witness Freeman's hearsay testimony concerning threats to the life of plaintiff's Superintendent Delinger (Tr., p. 780).

41. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 780), in permitting plaintiff's witness, Freeman, to testify (Tr., pp. 781-783) concerning a conversa-



tion between himself and witness Bryan on August 2, 1949, at the Salyersville meeting.

page 334 } 42. The Trial Court erred in permitting (Tr., p. 795), over defendants' objections and exceptions (Tr., pp. 794, 795), the answers to Questions 41 and 42 of the deposition of Henry Starr (Tr., pp. 794, 795), to be read to the jury and in failing to exclude said questions and answers and to instruct the jury to disregard said questions and answers.

43. The Trial Court erred, over defendants' objections and exceptions (Tr., pp. 808-812, both inclusive), in permitting the answers to Questions 125-131, both inclusive, 142, 143, 145, 146, 147, 148, 149, 151, 152, 153, 154, 156, 157, 163-168, both inclusive, of the depositions of Henry Starr to be read to the jury (Tr., pp. 807-816), both inclusive), and the answers to Questions 1 and 2 appearing on pages 818 and 821 and Questions 2 through 8, both inclusive, appearing on pages 822-824, both inclusive, of the Transcript of Proceedings, to be read to the jury.

44. The Trial Court erred in permitting to be read to the jury, over defendants' objections and exceptions, the answers in the deposition of Bert Preston, Sr., concerning reports which had come to him that the Carpenters of Local 646 had been run off the job in Breathitt County, Kentucky (Tr., pp. 871, 872).

45. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 873) plaintiff's counsel to read to the jury from the deposition of Bert Preston, Sr., the hearsay testimony that "they told me they were ganging up" (Tr., p. 872), and in failing and refusing to strike such answer from the evidence and to instruct the jury to disregard it, and in permitting said counsel to read to the jury also the answer to question 29 of said deposition (Tr., p. 873).

page 335 } 46. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's counsel to read to the jury the testimony of Bert Preston, Sr., given in a deposition concerning conversations at the meeting at Salyersville on August 2, 1949, and the meeting of the Paints-ville Local on July 26, 1949 (Tr., pp. 881-883, both inclusive).

47. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 887), plaintiff's counsel to read to the jury from the deposition of Bert Preston, Sr., the hearsay and immaterial statements between Preston and Hart concerning William Hutchinson (Tr., pp. 887-889, both inclusive).

48. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 925, 926), plaintiff's wit-



ness, Norman Hackworth, to relate a conversation between him and Bryan (Tr., pp. 925-926), and in permitting the witness to testify that he told Bryan that he wasn't going to work because "I thought a lot more of my life than I did of that job of work; that I feared I would be killed if I went back to work" (Tr., p. 926).

49. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Norman Hackworth, to testify (Tr., p. 922) that "the rumor had been around that they were coming to run us off the job, United Construction".

50. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 932, 933), plaintiff's witness, Norman Hackworth, to relate conversations between himself and employees to whom he went for the purpose of getting them to sign application blanks to join the A. F. of L. (Tr., pp. 932-933).

page 336 } 51. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witnesses to testify concerning conversations between Bryan and plaintiff's employees and concerning acts and transactions at plaintiff's work site on July 27, 1949 (Tr., pp. 910-911, 925-926, 970, 988, 989, 1016-1018, both inclusive, 1008-1009).

52. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Otto Preston, to testify concerning remarks made by Estle Robinson (Tr., p. 1038).

53. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Mayo, to relate a conversation between himself and some laborers (Tr., pp. 1044, 1945).

54. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 1110-1111, 1123), plaintiff's witness, Delinger, to testify concerning conversations between himself and Bryan (Tr., pp. 1111-1114, both inclusive, 1124), and between Delinger and other employees of plaintiff (Tr., p. 1121).

55. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1123), in permitting plaintiff's witness, Delinger, to testify concerning a conversation between himself and one Adams, and between himself and Weaver Freeman (Tr., pp. 1122-1126, both inclusive).

56. The Trial Court erred, over defendants' objections and exceptions, in permitting plaintiff's witness, Ragan, to testify that plaintiff's laborers had signed applications with the A. F. of L. Carpenter's Local in Salyersville, Kentucky, to

become carpenters' helpers (Tr., p. 1142), and to  
page 337 } testify concerning such applications (Tr., p. 1142),  
and to relate conversations between himself and  
other employees of the plaintiff (Tr., p. 114).

57. The Trial Court erred, over defendants' objections and exceptions, in permitting plaintiff's witnesses, Bert Preston, Sr. (Tr., pp. 833-835, both inclusive), John Hackworth, Jr. (Tr., pp. 909-910), Norman Hackworth (Tr., pp. 926-928, both inclusive), and Robert Hackworth (Tr., pp. 945-946), to testify concerning conversations and transactions at the meeting of the Paintsville Local No. 646 on July 26, 1950.

58. The Trial Court erred, over defendants' objections and exceptions, in permitting plaintiff's witnesses, Bryan (Tr., pp. 351-352) and Preston, Sr. (Tr., pp. 836-837), to testify concerning conversations and transactions at the Salyersville meeting on August 2, 1950.

59. The Trial Court erred, over defendants' objections and exceptions (Tr., pp. 901-902, 952-953, 1058), in permitting plaintiff's witnesses, John Hackworth, Jr. (Tr., pp. 901-902), Norman Hackworth (Tr., p. 922), Jack Patrick (Tr., pp. 952-953), C. H. Patrick (Tr., p. 967), Chester Trimble (Tr., p. 983), LeGrand Mayo (Tr., pp. 1040, 1057-1058), and Maynard C. Ragan (Tr., p. 1140), to testify, or in permitting answers to be read to the jury from depositions (Tr., pp. 1057-1058), concerning rumors or reports regarding United Construction Workers coming to plaintiff's job in Breathitt County.

60. The Trial Court erred, over defendants' objections and exceptions, in failing and refusing to strike the following question and answer (Tr., p. 952) from the evidence and to instruct the jury to disregard the same:

"Q. Before that time did you receive any report that the United Construction Workers were going to run you off the job?"

"A. I did."

page 338 } 61. The Trial Court erred, over defendants' ob-  
jections and exceptions, in failing and refusing to  
strike the following question and answer (Tr., p. 901) from  
the evidence and to instruct the jury to disregard the same:

"Q. Before that Monday morning had you as a member of the union been told that there would be any difficulty there that week?"

"A. Yes, sir."

62. The Trial Court erred, over defendants' objections and exceptions, in permitting plaintiff's witness, Trimble, to relate conversations between himself and unidentified persons (Tr., pp. 1010-1011), and permitting answers to questions 102, 103 and 104 on page 804 of the Transcript of the Proceedings to be read to the jury.

63. The Trial Court erred, over defendants' objections and exceptions, in failing and refusing to strike the question 16 in the deposition of LeGrand Mayo and the answer thereto (Tr., p. 1057) from the evidence and to instruct the jury to disregard said question and answer.

64. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 1970), plaintiff's counsel to read to the jury from Interrogatory (4), question 38, and the answer thereto (Tr., pp. 1970-1972, both inclusive).

65. The Trial Court erred in permitting (Tr., pp. 103, 145, 147), over defendants' objections and exceptions (Tr., pp. 103, 107, 145, 146, 148), plaintiff's counsel to ask and plaintiff's witness, Bryan, to answer questions concerning the relationship of each of Kathryn Lewis (Tr., pp. 103, 148) and A. D. (Denny) Lewis (Tr., pp. 103, 147) to John L. Lewis.

66. The Trial Court erred in permitting (Tr., p. 145), over defendants' objections and exception (Tr., pp. 103, 107, 146, 148), plaintiff's witness, Bryan, to testify (Tr., page 339 } pp. 147-149, both inclusive) concerning the appointments of A. D. (Denny) Lewis, Kathryn Lewis and O. B. Allen and the alleged power of John L. Lewis to discharge or suspend each of them.

67. The Trial Court erred in permitting (Tr., p. 154), over defendants' objections and exceptions (Tr., pp. 150-152, both inclusive, 154, 156, 264), plaintiff's witness, Bryan, to testify by reading from a memorandum.

68. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 151, 152, 154, 156), plaintiff's witness, Bryan, to testify concerning the construction work which plaintiff had done for Island Creek Coal Company or any of its associated or subsidiary companies prior to October 24, 1948 (Tr., pp. 154-157, both inclusive).

69. The Trial Court erred in permitting (Tr., pp. 195, 198), over defendants' objections and exceptions (Tr., pp. 159, 197, 198), plaintiff's witness, Bryan, to testify that when plaintiff executed the October 28, 1948, contract with Pond Creek Pocahontas Company, it was agreed that plaintiff would perform additional work in Breathitt County amounting to \$600,000 and that the work would be performed on a basis of cost plus a fee of five per cent (Tr., pp. 198, 468).

70. The Trial Court erred in permitting (Tr., p. 199), over defendants' objections and exceptions (Tr., pp. 159, 195, 199), plaintiff's witness, Bryan, to testify that plaintiff's business connections with Island Creek Coal Company and Pond Creek Pocahontas Company "was a permanent connection" (Tr., p. 199), and to testify regarding the value of that connection (Tr., pp. 199-200).

page 340 } 71. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 211), plaintiff's witness, Bryan, to testify concerning the kind and value of equipment plaintiff had to take to the job site for the execution of the contract of October 28, 1948 (Tr., pp. 211-215).

72. The Trial Court erred in permitting (Tr., p. 226), over defendants' objections and exceptions (Tr., pp. 224, 226), plaintiff's witness, Bryan, to testify concerning the arrangements made by plaintiff to house and feed its employees in Kentucky (Tr., pp. 224-228, both inclusive).

73. The Trial Court erred in permitting (Tr., p. 228), over defendants' objections and exceptions (Tr., p. 228), plaintiff's witness, Bryan, to testify (Tr., p. 229) that wages paid by plaintiff to laborers were satisfactory to the A. F. of L. people (Tr., p. 229).

74. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 247), plaintiff's witness, Bryan, to testify (Tr., p. 247) how the rate of wages paid by plaintiff to its common laborers was determined.

75. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 258), plaintiff's witness, Bryan, to testify concerning passing a number of automobiles, filled with men, headed in the opposite direction from the way Bryan was going (Tr., pp. 258-259).

76. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 444), counsel for plaintiff to inquire of witness, Bryan, and for Bryan to answer inquiries concerning his willingness or unwillingness to furnish copies of income tax returns requested by defendants (Tr., pp. 444-446, both inclusive).

page 341 } 77. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Bryan, to testify concerning bids made by plaintiff for work after August, 1949 (Tr., pp. 476-492, both inclusive).

78. The Trial Court erred in rejecting and overruling Tr., p. 491 defendants' motions (Tr., pp. 486, 489) that the Court strike, and instruct the jury to disregard, all testimony in plaintiff's behalf relating to the business relationship "of the Plaintiff with the Coal Companies after the date the suit

was instituted" and that the Court thereafter exclude (Tr., pp. 486, 489) "any more testimony on that point", to which ruling defendants excepted (Tr., p. 491).

79. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 737, 738), plaintiff's witness, Frank Dixon, to answer the questions, (1) "In the discharge of your duties have you come to know about the contests and accords and differences between the American Federation of Labor and the United Mine Workers of America" and (2) whether that is also true between American Federation of Labor and District 50 of the United Mine Workers of America and (3) whether that is also true between said Federal and the United Construction Workers, affiliated with the United Mine Workers of America (Tr., p. 738).

80. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 742, 744), plaintiff's witness, Frank Dixon, to testify concerning the American Federation of Labor's policy about crossing a picket line (Tr., pp. 742, 745), and in failing to strike such evidence from the record and to instruct the jury to disregard it.

81. The Trial Court erred in permitting, over page 342 } defendants' objections and exceptions (Tr., pp.

860, 863, 864), plaintiff's witness, Bert Preston, Sr., to give the following answers to the questions propounded to him by plaintiff's counsel as follows:

"Q. Then when Hart asked you would honor a picket line, why did you tell him you would?

"Q. Why did you tell him you would honor a picket line?

"A. It was my only way out" (Tr., p. 860).

"Q. Based on what you heard, what you saw, and what you did, and what you know, there at the job site on the 26th day of July, 1949, did the AF of L men quit on account of the picket line, or because they were scared to work?

"A. It was through fear that we quit, instead of the picket line" (Tr., p. 864).

82. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 884), plaintiff's counsel to read to the jury the following question and answer from the deposition of Bert Preston, Sr.,

"Question 101. If you had been working over there and Hart had told you what went on there, would you have been willing to go back to work?

"Answer. No, sir.

and in failing and refusing to strike the question and answer from the evidence and to instruct the jury to disregard the same, and in permitting said counsel to read to the jury the following question and answer from said deposition:

"Question 102. Why?

"Answer. I wouldn't want to get hurt."  
page 343 } (Tr., pp. 884-885).

83. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 897-898), plaintiff's counsel to place Mr. Willard Owens on the stand as a witness for the plaintiff and asking him his name, his father's name, and his father's connection with the United Mine Workers of America, (Tr., pp. 889, 891-899) and requiring the witness to answer such questions.

84. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 925), plaintiff's witness, Norman Hackworth, to be asked "Why didn't you go on over there?" and in permitting the witness to answer that "The reason why I didn't go to the tippie was because I didn't want to go over there. They told me I wasn't going to work any more, and I didn't want to get around to where they were at, because I felt maybe some of them would stick a knife in my back or shoot me" (Tr., pp. 924-925).

85. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Norman Hackworth, to testify that "I wouldn't work over there, anyway, after this all came about, if they offered me a job" (Tr., p. 929) and to answer, to the question "Why?" propounded by plaintiff's counsel, "Because I would be afraid to go back over there" (Tr., p. 929).

86. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 930), the plaintiff's witness, Norman Hackworth, to be asked "Did you turn the heat on them to make them sign up?", and in permitting the witness to answer, "No, Sir." (Tr., pp. 929, 930) and in failing and refusing to strike such question and answer from the evidence and to instruct the jury to disregard the same.

87. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 944, 945), the plaintiff's witness, Robert Hackworth, to be asked why he  
page 344 } did not go to the tippie and in permitting the witness to be asked "Were you scared to go to the tippie?" (Tr., p. 945), and the witness to answer "Sure". (Tr., p. 945), and the witness to be asked "Why?" (Tr., p. 945), and the witness to answer "I figured they would have trouble or something down there and I didn't want to get in-



volved enough to maybe get hurt or be killed or something" (Tr., p. 945).

88. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 947), plaintiff's witness, Robert Hackworth, to be asked the question "Why did you do that?", and for the witness to answer "I couldn't make up my mind to go back to work. I just dreaded to go in there and probably start work and maybe get killed or something. I didn't want to do that. I finally decided to go. I intended to work if they were working and had everything settled down. I wasn't sticking my neck out" (Tr., p. 947).

89. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 956), plaintiff's counsel to ask of plaintiff's witnesses the question "Why?", and in permitting the witnesses,

John Patrick (Tr., pp. 956, 957, 958)

C. H. Patrick (Tr., p. 981)

Chester Trimble (Tr., pp. 987, 988, 990)

Paris Trimble (Tr., pp. 1008, 1009)

Sublett (Tr., pp. 1016, 1018, 1019, 1022)

Loumie Dixon (Tr., pp. 1027, 1028)

Estle Robinson (Tr., p. 1030)

LeGrand Mayo (Tr., p. 1042),

to answer the questions so propounded.

90. The Trial Court erred in overruling defendants' motion (Tr., p. 977), to exclude the hearsay testimony of plaintiff's witness, C. H. Patrick, and to direct the jury to disregard it, to which ruling defendants noted their exception (Tr., p. 977).

91. The Trial Court erred in overruling (Tr., p. 993) defendants' motion (Tr., p. 992) to exclude from the evidence the statement of the witness, Chester Trimble, "but they would have been" and "I said they could have been, and "I said there could have been; it would have went far enough to call their hand and done what they ordered us not to." (Tr., p. 992), to which ruling defendants excepted (Tr., p. 993).

92. The Trial Court erred in overruling (Tr., p. 1003) defendants' motion to strike all of the testimony of witness, Chester Trimble, as to anyone being run off the job at Greenbrier for the reason that his testimony shows that all of his knowledge is hearsay (Tr., pp. 1002-1003).

93. The Trial Court erred in permitting, over defendants' objections and exceptions, the following questions and an-



swers to be read to the jury from the deposition of plaintiff's witness, Mayo:

"Question 27. Why didn't you work?

"Answer. I couldn't afford to. I was afraid to work there at that time." (Tr. p. 1060)

"Question 34. Did you work any there that Wednesday morning?

"Answer. No, sir. I was just like I was the day before, I thought it would be dangerous" (Tr., p. 1061).

"Question 38. Why didn't you work any more there while Laburnum Construction Corporation was there?

"Answer. I couldn't afford to. I felt there was danger there." (Tr. p. 1062)

94. The Trial Court erred in permitting, over page 346 } defendants' objections and exceptions (Tr., pp. 1077, 1079, 1081-1083), the questions and answers in the depositions of Raymond E. Salvati to be read to the jury concerning the comparison of production tonnage of Island Creek Coal Company and Pond Creek Pocahontas Company with other commercial coal companies within the United States (Tr., pp. 1077-1078), and concerning additional construction work which Pond Creek Pocahontas Company contemplated at the time it entered into the contract of October 28, 1948 with plaintiff (Tr., pp. 1079-1081), and in failing and refusing to strike the question (Tr., p. 1079);

"Question. When the contract that we have just introduced was executed did the Pond Creek Pocahontas Company contemplate construction work in Breathitt County, Kentucky, in addition to work on the coal preparation plant at the No. 1 mine?"

and the answer thereto "It did", and to instruct the jury to disregard said question and answer, and also in permitting to be read to the jury from said depositions the questions and answers concerning any understanding which said Coal Company had with plaintiff with reference to additional work (Tr., pp. 1081-1087, both inclusive).

95. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 1087-1088), the answer in the deposition of Raymond E. Salvati, to be read to the jury concerning "Why?" plaintiff did not proceed with the construction of the concrete foundation for the coal preparation plant (Tr., p. 1087) and in refusing and failing to strike said answer from the evidence and to instruct the jury to disregard it.

96. The Trial Court erred in permitting, over page 347 { defendants' objections and exceptions (Tr., pp. 1089, 1091, 1093), questions and answers in the deposition of Raymond E. Salvati to be read to the jury concerning additional work (Tr., pp. 1089, 1090-1091), and in failing and refusing to strike said questions and answers from the evidence and to instruct the jury to disregard the same, and in permitting questions and answers in said deposition to be read to the jury concerning the list of commitments for work prior to October 28, 1948, between plaintiff and Pond Creek Pocahontas Company or Island Creek Coal Company (Tr., pp. 1093, 1094), as well as the memorandum concerning such commitments (Tr., p. 1094).

97. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., p. 1098), the answer in the deposition of Raymond E. Salvati, that "we felt that it was inadvisable for Laburnum Construction Corporation to bid on these two particular buildings, that we felt that if they did it might cause us a lot of trouble around our mines" (Tr., pp. 1097-1098) to be read to the jury, and in permitting a letter dated May 18, 1950, offered as Exhibit 5, according to said deposition, to be received in evidence and read to the jury (Tr., p. 1098).

98. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 1100-1101), the answer in the deposition of Raymond E. Salvati, to be read to the jury concerning "Why?" plaintiff had not been invited to submit proposals for work since May 18, 1950 (Tr., pp. 1100, 1101), and concerning Salvati's expectation of plaintiff's continuation to do work for the Pond Creek Pocahontas Company and Island Creek Coal Company (Tr., pp. 1101, 1102).

99. The Trial Court erred in requiring, over page 348 { defendants' objections and exceptions (Tr., pp. 1585-1586), defendants' witness Hart to testify concerning the shooting and killing of the Sheriff of Pike County, Kentucky (Tr., pp. 1585-1588).

100. The Trial Court erred in permitting plaintiff's counsel, over defendants' objections and exceptions (Tr., p. 1609), to read to the jury the report of David Hunter to A. D. Lewis, Chairman of the Organizing Committee, District 50, UMW and UCW, United Mine Workers, Washington 5, D. C. on Saturday, March 18, 1950 (Exhibit 4-8) (Tr., pp. 1609-1610), and to require defendants' witness, Hart, to testify concerning the statement in the report about him (Tr., pp. 1609-1610).

101. The Trial Court erred in permitting, over defendant's objections and exceptions (Tr., p. 1634), Plaintiff's counsel on cross examination of plaintiff's witness, Robinson, to read

from the answer of United Construction Workers to plaintiff's interrogatories, the report of David Hunter for the week ended September 9, 1950, as it appears on page 1634 of the Transcript of Proceedings and to require the witness to answer the question "What have you got to say about that fear" (Tr., pp. 1633-1635, both inclusive).?

102. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1681), in permitting plaintiff's counsel, on cross-examination of witness Higgins, to inquire, "If I was working on the tippie and you were laying out in the woods do you think you could shoot me off?" and "If I was working on the tippie—of course I hope you wouldn't want to—but if I was working on the tippie and you were out in the woods, do you think you could shoot me off?", and for the witness to answer, "If I wasn't too far away and had a good rifle I probably could, yes. I have killed squirrels" (Tr., p. 1681).

page 349 } 103. The Trial Court erred, over defendants' objections and exceptions (Tr., pp. 1754, 1755), in permitting plaintiff's counsel, on re-cross-examination of defendants' witness Fohl, Jr., to ask the question, "I say if you had a majority of the laborers signed up at Hopewell why didn't you start a proceeding before the National Labor Relations Board for an election so that your people could be certified as the bargaining agent"?, and in requiring the witness to answer such question, as appears on pages 1755 and 1756 of the Transcript of Proceedings.

104. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1787), in permitting plaintiff's counsel to inquire of defendants' witness Bach, the question, "If you want to go to work in eastern Kentucky you pretty well have to jine up, don't you" (Tr., p. 1787)?

105. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1915), in permitting plaintiff's counsel to refer to and read to the jury from Exhibit 4-1, which is a weekly report for the three weeks ended January 7, 14 and 21, 1950, dated January 23, 1950, as appears on pages 1915 and 1916 of the Transcript of Proceedings; and to inquire of defendants' witness Raney concerning said report, and in requiring said witness to testify concerning said report (Tr., pp. 1915-1920, both inclusive).

106. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1920), in permitting plaintiff's counsel to refer to and read to the jury from Exhibit 4-22, with answer of District 50, which is David Hunter's report to Mr. A. D. Lewis, dated April 7, 1950, for two weeks ending

March 25 and April 1, 1950, and which portion of said Exhibit, as read to the jury, appears on page 1921 of the Transcript of Proceedings; and to inquire of defendants' witness

Raney, and to require said witness to testify, page 350 } about said report, as appears on pages 1921-1924, both inclusive, of the Transcript of Proceedings.

107. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1924), in permitting plaintiff's counsel to refer to and read to the jury from Exhibit 4-17, with the answer of United Mine Workers of America, which is the weekly report for the week ending June 24, 1950, and which portion of said Exhibit, as read to the jury, appears on pages 1924 and 1925 of the Transcript of Proceedings; and to inquire of defendants' witness Raney, and to require said witness to testify, about said report, as appears on pages 1925-1930 of the Transcript of Proceedings.

108. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 897-898), plaintiff's witness Baird to testify that "these estimates in here do not include any estimate of profit the company would have made by the use of its own equipment" and in failing and refusing to strike said testimony from the evidence and to instruct the jury to disregard such testimony (Tr., p. 2009).

109. The Trial Court erred in overruling (Tr., p. 2024), defendants' motion (Tr., p. 2022) to strike the testimony of plaintiff's witness Hugh H. Baird, Jr., to which ruling defendants excepted (Tr., p. 2024).

110. The Trial Court erred in overruling (Tr., p. 769) defendants' objections and permitting plaintiffs' witness, Dixon, to testify (Tr., pp. 770-771) concerning the general course or pattern of conduct of United Construction Workers in other parts of eastern Kentucky, to which ruling defendants excepted (Tr., pp. 769-770).

111. The Trial Court erred in permitting, over page 351 } defendants' objections and exceptions (Tr., pp. 958, 958-A, 973, 1021, 1045), plaintiff's witnesses Jack Patrick (Tr., pp. 958, 958-A, 958-B), C. H. Patrick (Tr., pp. 972-974, both inclusive), Chester Trimble (Tr., pp. 990-991), Sublett (Tr., pp. 1020-1021), and Mayo (Tr., pp. 1045-1046) to testify concerning the reputation of United Construction Workers in eastern Kentucky about allegedly running A. F. of L. members off of jobs.

112. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 956, 1095, 1096), the answer in the deposition of Raymond E. Salvati, to be read to the jury concerning the contract between Island Creek Coal Company "or one of its associated or subsidiary companies

with Hamill Construction Company" (Tr., pp. 1095, 1096), and that said Construction Company was not able to complete the work and the reason therefor (Tr., p. 1096).

113. The Trial Court erred in permitting plaintiff's counsel to ask questions, and in requiring, over defendants' objections and exceptions (Tr., pp. 1597-1600, both inclusive), defendants' witness, Hart, on cross examination, to testify to questions concerning conversations and transactions at the Beckett Construction Company job at Wheelwright, Kentucky (Tr., pp. 1597-1600, both inclusive).

114. The Trial Court erred in permitting plaintiff's counsel, over defendants' objections and exceptions (Tr., p. 1613), on re-cross examination, to inquire of defendants' witness, Hart, whether he had run anybody off any job in eastern Kentucky in 1949, and to require the witness to answer such questions (Tr., pp. 1613-1614).

page 352 } 115. The Trial Court erred, over defendants' objections and exceptions (Tr., pp. 1910-1911, 1913, 1937), in permitting plaintiff's counsel to inquire of defendants' witness Raney, on cross examination, and in requiring the witness to testify, concerning alleged trouble in Prestonsburg in September, 1949, which involved the Hughes Motor Company and Ranier's Garage (Tr., pp. 1910-1911, 1937-1939, both inclusive); and in inquiring of said witness, and in requiring said witness to answer, the question if he had "heard or knew of anyone being run off a job in eastern Kentucky" by the defendants (Tr., pp. 1912-1914, both inclusive).

116. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1930), in permitting plaintiff's counsel to inquire of defendants' witness Raney, and in requiring said witness to testify, concerning alleged labor trouble at the Link-Belt Company at Wheelwright, Kentucky (Tr., p. 1930) and about United Construction Workers allegedly running anybody off jobs at Wheelwright, Hughes Motor Company and Ranier's Garage (Tr., pp. 1930-1932, both inclusive).

117. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1933), in permitting plaintiff's counsel to refer to the report of David Hunter, Acting Director, Region 58, dated April 7, 1950, in the answer of District 50, United Mine Workers of America, to plaintiff's interrogatories, and to read from said report to the jury, as appears on page 1934 of the Transcript of Proceedings.

118. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1934), in permitting plaintiff's counsel to refer to a report by David Hunter to Mr. A. D. Lewis,

dated May 22, 1950, weekly report for the week  
 page 353 } ending May 20, 1950, and to read to the jury from  
 said report, as appears on pages 1934-1935 of the  
 Transcript of Proceedings.

119. The Trial Court erred, over defendants' objections the answer of District 50, United Mine Workers of America, which is a report by David Hunter to Mr. A. D. Lewis, dated August 5, 1950, and to read to the jury from said report, as appears on pages 1935 and 1936 of the Transcript of Proceedings.

120. The Trial Court erred, over defendants' objections and exceptions (Tr., p. 1936), in permitting plaintiff's counsel to refer to and read to the jury from Exhibit 4.28, with the answer of District 50, United Mine Workers of America, which is a report by David Hunter to Mr. A. D. Lewis, dated September 14, 1950, and to read to the jury from said report, as appears on pages 1936-1937 of the Transcript of Proceedings.

121. The Trial Court erred, over defendants' objections and exceptions (Tr., pp. 1947, 1949, 1950, 1951, 1952, 1958, 1959), in permitting plaintiff's counsel to read to the jury the deposition of Nelson Baldrige, as appears on pages 1948-1950, both inclusive, of the Transcript of Proceedings and the Trial Court erred in overruling defendants' motion to exclude (Tr., p. 1958) the deposition as read to the jury, to which ruling defendants excepted (Tr., p. 1958).

122. The Trial Court erred in permitting (Tr., p. 302), over defendants' objections (Tr., p. 301) and exceptions (Tr., p. 302), plaintiff's witness, Bryan, to detail the utterances of

Bert Preston concerning the reputation which the  
 page 354 } people in Breathitt and other counties of the  
 State of Kentucky had for shooting and that, in  
 Preston's opinion, they would shoot at the workers and it  
 was too dangerous to go back to work and advised against it  
 (Tr., p. 302).

123. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witness, Norman Hackworth, to testify that he knew the reputation of "those people in that country. It was very bad. I didn't want to get killed, and I felt if I worked on there, I would get killed (Tr., p. 923), and that he did not go back to work because "I was afraid to" (Tr., p. 924).

124. The Trial Court erred in permitting, over defendants' objections and exceptions, plaintiff's witnesses to testify concerning the reputation of Breathitt County for law abiding or law breaking (Tr., pp. 967, 968).



125. The Trial Court erred in refusing (Tr., p. 451), defendants' request that defendants be permitted to examine plaintiff's tax returns (Tr., pp. 434-435, 457-458), to which ruling defendants excepted (Tr., p. 458).

126. The Trial Court erred in refusing to permit defendants' counsel to inquire of plaintiff's witness Baird concerning income taxes and income tax returns of plaintiff for the State of Kentucky and in refusing to require plaintiff's witness to answer questions concerning said taxes and income tax returns (Tr., pp. 2033-2034), to which ruling defendants excepted (Tr., p. 2034).

127. The Trial Court erred in rejecting and refusing (Tr., pp. 556-557) the motion of counsel for defendants page 355 } (Tr., p. 85) to permit Mr. Fred Pollard to examine and cross-examine witnesses on behalf of District 50, and either Mr. James Mullen or Colonel Crampton Harris to examine and cross-examine witnesses on behalf of United Construction Workers and the United Mine Workers of America.

128. The Trial Court erred in overruling (Tr., p. 698) defendants' motion to discharge the jury and declare a mistrial (Tr., pp. 648, 661-671, inclusive), to which ruling defendants excepted (Tr., p. 698).

129. The Trial Court erred in overruling the objection of defendants to the introduction of 24 application blanks, to which ruling defendants excepted (Tr., pp. 300, 400, 510).

130. The Trial Court erred in failing and refusing to exclude from the consideration and hearing of the jury certain evidence of acts and transactions introduced through plaintiff's witnesses, which evidence was objected to and excepted to by the defendants.

131. The Trial Court erred in failing and refusing over the objections and exceptions of the defendants, to exclude evidence introduced by plaintiff's profits obtained by United Construction Corporation which were made by United Mechanical Corporation.

132. The Trial Court erred in failing and refusing to exclude evidence and testimony in which defendant's witnesses and excepted during the course of the trial.

133. The Trial Court erred in citing illustrations Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

134. The Trial Court erred in refusing to exclude defendants' testimony.

135. The Trial Court erred in refusing to exclude defendants' testimony.

136. The Trial Court erred in refusing to exclude defendants' testimony.



shown by Instruction "A", "J" and "O-2" given by the Court and in giving the same as so modified.

136. The Trial Court erred in refusing to sustain and in overruling defendants' Motion for a Mistrial made on January 29, 1951, on the grounds of prejudicial and inflammatory remarks made by Counsel for plaintiff, and similar remarks made by plaintiff's witness A. Hamilton Bryan.

137. The Trial Court erred in refusing to sustain and in overruling defendants' Motion for a Mistrial made on February 14, 1951, because of the appearance of a highly prejudicial and inflammatory editorial in the Newspaper "Richmond News Leader" on February 13, 1951, entitled "Enemies of the Miners?".

138. The Trial Court erred in refusing to sustain a renewal of said motions for a mistrial made by the defendants in their motion to set aside the jury verdict and grant a new trial because of said prejudicial and inflammatory remarks and editorial, as well as further prejudicial and inflammatory remarks made by Counsel for the plaintiff during the remainder of the trial.

139. The Trial Court erred in refusing to permit counsel for the defendants to poll the jury regarding the editorial in the "Richmond News Leader" of February 13, 1951, entitled "Enemies of the Miners?", after the jury had rendered their verdict.

140. The Court erred in refusing to sustain, and in overruling, defendants' Motion to Set Aside the Verdict of the Jury and to Grant a New Trial on the grounds that the jury's verdict for compensatory damages is excessive.

page 357 } 141. The Trial Court erred in refusing to sustain, and in overruling, the defendants Motion to Set Aside the Verdict of the Jury and to Grant a New Trial on the grounds that the jury's verdict for punitive damages is excessive.

142. The Trial Court erred in refusing to sustain, and in overruling, defendants' Motion to Set Aside the Verdict of the Jury and to Grant a New Trial on the ground that the jury's verdict that the defendants are jointly and severally liable to plaintiff is contrary to the law and the evidence and is without evidence to support it.

143. The Trial Court erred in permitting, over defendants' objections and exceptions (Tr., pp. 97-98) plaintiff's witness, Bryan, to testify concerning the dollar volume of construction work which plaintiff did during the past 10 years (Tr., pp. 98, 100).

144. The Trial Court erred in failing and refusing to sustain Motion of Defendants to strike the remarks of plaintiff's

counsel appearing on pages 225-226 of the Transcript of Proceedings.

145. The Trial Court erred in admitting evidence of other acts allegedly committed by the defendants introduced by plaintiff for the purpose of showing a course of conduct by the defendants, over the defendants' objections and exceptions.

146. The Trial Court erred in refusing to sustain, and in overruling, defendants' Motion to Set Aside the Verdict of the Jury and to Grant a New Trial, and in entering said judgment of July 5, 1951, on the grounds that the jury's verdict and said judgment (a) deprive the defendants, and each of them, of liberty and property in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, (b) constitute a denial to the page 358 } defendants, and each of them, of the exercise of rights granted to them by the First Amendment to the Constitution of the United States, and (c) constitute a denial to the defendants, and each of them, of rights granted by the Constitution and laws of the United States, including the Norris-LaGuardia Act, 29 U. S. C. A. Sections 101-110, 113-115, the Clayton Act, 15 U. S. C. A. Sections 12-13, 14-21, 22-27, 44; 29 U. S. C. A. Section 52, and the Labor Management Relations Act of 1947, 29 U. S. C. A. Sections 141-197.

147. The Trial Court erred in refusing to sustain, and in overruling, defendants' Motion to Set Aside the Verdict of the Jury and to Grant a New Trial for each and every ground assigned therein to defendants' written motion to set aside the verdict and grant a new trial.

page 359 } 148. The Trial Court erred in entering judgment upon the verdict of the jury that the plaintiff recover of the defendants, jointly and severally, the sum of \$275,437.19, with interest and costs, which judgment was entered on July 5, 1951.

Note: For the convenience of the Court we have wherever possible given references to the stenographic reporters transcript where the incidents complained of have been reported. In many cases there were continuing objections to specific lines of examination of witnesses or other conduct and continuing exceptions to the Trial Court's rulings and complete references to the transcript are not practicable in all cases. The failure to give complete references is not intended as a waiver of any specific evidence or conduct during the trial which is covered by the substance of any assignment of error.

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## Supreme Court of Appeals of Virginia.

## PRE-TRIAL CONFERENCE.

## VOLUME 1.

. . . . .

Received and filed Aug. 16, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

. . . . .

## ARGUMENT ON INTERROGATORIES.

City Hall,  
Richmond, Virginia,  
Thursday, October 12, 1950.

Met, pursuant to agreement, at 9 30 o'clock a. m.

Before: Hon. Harold F. Snead, Judge.

**Appearances:** Archibald G. Robertson, Francis V. Lowden, Jr., and T. Justin Moore, Jr., of Hunton, Williams, Anderson, Gay & Moore, Electric Building, Richmond, Virginia, appearing on behalf of the Complainant.

page 2 } James Mullen, and Fred G. Pollard, of Williams, Mullen, & Hazelgrove, Richmond, Virginia;

Colonel Crampton Harris, 1018-19 First National Building, Birmingham, Alabama; and

Yelverton Cowherd, 1435 K Street, N. W., Washington, D. C., appearing on behalf of the Defendants.

Also Present: A. Hamilton Bryan, President of the Laburnum Construction Company.

Willard Owens, 900--15 Street, N. W., Washington, D. C.

page 3 }

## PROCEEDINGS.

The Court: We will proceed, gentlemen.

Mr. Robertson: The appearances for the complainant are Archibald G. Robertson, Francis V. Lowden, Jr., and T. Justin Moore, Jr. Also present is Mr. A. Hamilton Bryan, President of the Laburnum Construction Corporation. As such, he is interested in these proceedings.

I now ask defendants to let the record show everybody present, who they are, that have already not been named. I ask that everybody in this room be shown as to who was here, what their capacity is.

The Court: The Court doesn't see any objection to that.

Mr. Pollard: The appearances for the Defendant are James Mullen, Fred G. Pollard.

Mr. Robertson: And—

Mr. Pollard: If you will wait until I finish—

Mr. Robertson: I don't know when you have finished, and when you are whispering to other people.

Mr. Pollard: Also appearing for the Defendants, Crampton Harris, Esq., counsel for the defendants. He has been admitted to practice before this Court. His address is on file with the Clerk.

Mr. Robertson: Have you any objection here to telling what his home address is? What his firm is? 1000  
page 4 } Mr. Pollard: None.

Col. Harris: It is 1018-19 First National Building, Birmingham, Alabama. I practice law.

Mr. Pollard: Also present is Yelverton Cowherd.

Mr. Cowherd: My address is 1435 K Street, N. W., Washington 5, D. C.

Mr. Robertson: I think you are also counsel for the United Construction Workers in this case?

Mr. Cowherd: Before I was so rudely interrupted, I will say that I have appeared in the case as counsel for United Construction Workers and District 50, United Mine Workers, each of which organization I am the General Counsel of. If that satisfies Mr. Robertson, I will cease, otherwise, I will talk until he gets tired.

The Court: Let's don't get in any controversy between counsel.

Mr. Pollard: Also present is Mr. Willard Owens, 900—15th Street, N. W. Washington, D. C.

Col. Harris: Mr. Owens doesn't appear as counsel. He is a mere spectator visiting in this Court.

Mr. Robertson: May we ask what function he has?

Col. Harris: No, we may not, it is immaterial. We decline to state why he is here.

Mr. Robertson: I ask the Court to ask him, so we will know.

The Court: Does the Court understand that Mr. 1000  
page 5 } Owens is just a visitor here?

Col. Harris: Yes.

The Court: I think that explains his presence here.

Mr. Robertson: I ask the Court if I might ask Mr. Owens

one question. I want the record to show everything that occurs.

The Court: Yes.

Mr. Robertson: Are you the son of Mr. John Owens, Secretary and Treasurer of the United Mine Workers of America?

Col. Harris: I object to that question. It is wholly immaterial. This hearing is a public hearing. As I understand it, any citizen is entitled to come here, and Mr. Owens does not appear as counsel. The time of this Court shouldn't be wasted in trying to get information as to who Mr. Owens is.

The Court: I sustain the objection.

All Right, Mr. Mullen.

Mr. Mullen: If your Honor, please—

Mr. Robertson: May I have that answer for the record? I except to the ruling of the Court. I would like to have it in the record.

The Court: I suppose you would be entitled to it for the record. All right.

Mr. Robertson: Mr. Owens, are you the son of Mr. John Owens, who is Secretary-Treasurer of United Mine  
page 6 } Workers of America?

Col. Harris: Don't answer. We repeat the objection.

The Court: The Court has sustained the objection. Counsel asked the privilege to ask the question for the benefit of the record, not for the benefit of the Court, in case this matter goes up.

Mr. Owens: Am I to become a witness, your Honor?

The Court: No, no witness at this point.

Mr. Mullen: The Judge has already ruled you don't have to answer the question. You can put it in the record.

The Court: In the record, but not for the purpose of this hearing. He has saved his point.

Mr. Robertson: The Court says that you answer the question.

The Court: Answer the question.

Mr. Owens: I am.

Mr. Mullen: If your Honor please, the defendant, United Mine Workers of America object as a whole to the interrogatories addressed by the complainant in this case.

The grounds of objection are as follows:

(1) The interrogatories as a whole and in special categories violate the Fourth Amendment to the Constitution of the United States, and the Statutes of Virginia, and are contrary to the decisions of the United States Supreme Court in that

they constitute a fishing expedition and impose an impossible task on the defendant.

(2) A large percentage of the questions asked are irrelevant and immaterial, and the periods for which information is asked is likewise irrelevant and immaterial.

(3) That the extensive duplication of questions imposes an undue burden on the defendant.

(4) That a large percentage of questions call for interpretation of written instruments and is an invasion of the functions of the Court.

(5) That the answers to certain categories of questions are known to, or information necessary to answer same is in the possession of, complainant.

(6) That certain categories are specifically intended to create prejudice and the interrogatories as a whole are directed to creating prejudice and to confuse the jury.

I have already stated the grounds for the objection.

The Court: Does counsel desire Mr. Mullen to repeat?

Mr. Lowden: There is a copy for us?

Mr. Mullen: I first objected that the interrogatories violate the Fourth Amendment to the Constitution of the United States.

The Court: Did you say Fourteenth?

Mr. Mullen: Fourth, in that it constitutes a fishing expedition and imposes an impossible task on the defendant.

The interrogatories are addressed to three distinct things: one, the production of documents; second, declarations by the defendants as to certain facts; and, third, declarations by defendants as to their interpretation of certain provisions of their respective constitution and rules.

Section 8-320 of the Code of 1950, Virginia, provides that a party may file interrogatories to any adverse party. Thereupon, the clerk shall issue a summons requiring the officer to summon the proper party to answer such interrogatories.

Section 8-321 of the Code of Virginia, 1950, provides:

"When the court \* \* \* is satisfied that the interrogatories are relevant and such as the person to whom they are propounded would be bound to answer upon a bill of discovery \* \* \* it may, if such person do not in a reasonable time file answers thereto, upon oath, or, if he file answers which are evasive, attach him and compel him to answer in open court, or to answer more explicitly. It may also, if it see fit, set aside a plea of his, and give judgment against him by de-

fault, or if he be plaintiff, order his suit to be dismissed with costs . . . .”

If he files answers which are evasive, the Court may attach him and compel him to answer in open court, under certain penalties.

Section 8-324 provides:

page 9 } “In any case at law a party may file an affidavit, setting forth that there is, he verily believes, a book of accounts or other writing in possession of an adverse party . . . containing material evidence for him, specifying with reasonable certainty such writing or the part of such book.”

It then provides the Clerk is to summons as provided in Section 8-320.

Section 8-325 provides:

“When the court is satisfied that the person filing such affidavit has no means of proving the contents of such writing, or of such part of the book, but by the person summoned producing what is required by the summons, and that the same is relevant and material . . . it may unless the person summoned shall, in a reasonable time, either produce what is so required, or answer in writing upon oath, that he has not under his control such book or writing.”

Then he may attach him and compel him to answer.  
The code section just quoted establish:

1. All facts demanded must be such as the applicant could obtain on a bill of discovery.

2. No document may be demanded unless the following requisites concur:

- page 10 } (a) The application is sworn to;  
(m) It states that the document is material;  
(c) It specifies the document “with reasonable certainty”;  
(d) The contents of the document are not otherwise provable by the applicant;  
(e) The person summoned to produce the document does not state under oath that it (or another of like import) is “not under his control”.



3. No fact or document may be demanded unless "relevant" or "material", under the terms of the statute.

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page 16 }

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I don't want to take the time of the Court, but I would like to refer to three little cases here, very briefly. There are innumerable cases on this subject, and all of them go to this same point, that it must show materiality. It must reasonably specify the document or book which contains the evidence and the mere suspicion isn't sufficient.

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page 19 } Mr. Mullen: I am going into certain questions that apply under the law I have just read. I am not undertaking at this time to go through all of the questions and ask a ruling on them. I desire to argue this question fully, citing the cases, the questions that come under it, and also arguing the other points, in order that the Court may pass on my request for an order to send these interrogatories and the interrogatories addressed to United Construction Workers and District 50 back to be reformed and revised by the complainant.

No. 1. is: "When and upon what authority was United Mine Workers of America first organized?"

"2. Furnish a copy of the Charter, Constitution, Rules, Laws, By-Laws and all other regulations and rulings of United Mine Workers of America in effect between the dates October 28, 1948, and August 4, 1949, together with a copy of all changes or revisions made in same since August 4, 1949."

Not only are the regulations and rulings not shown to be relevant, but United Mine Workers was organized in 1890, sixty years ago. It is entirely conceivable that a ruling made in the very first year is still in effect. That is the question, what rulings or regulations are in effect. That would mean a search over sixty years of records and looking up every letter, every ruling that they might make. The ruling might be what is the tonnage rate to be applied to mines  
page 20 } in the State of Missouri. It might be any one of thousands of questions. They are asking to bring

in all rulings and all regulations, regardless of whether relevant, and over a period of time that is simply impossible, an impossible burden on the defendant.

The difference is illustrated right in that very question, because a copy of the Charter, the Constitution, Rules, Laws and By-Laws, if there are any such papers, they are designated. They are designated by name.

There is a Constitution. They know that. They have had it already. So that is one of the examples of a fishing expedition.

Now, No. 6 calls for a charter or certificate of affiliation granted by U. M. W. to District 50. All right. That is a specific designation of a specific document that we can identify. If that is relevant, and it may be, they have a right to call for it.

The same thing applies to Question 7.

We now refer to Questions 13. It reads:

"13. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that, among other objects, it was an object of United Mine Workers of America to do the following:"

This is quoted from the Constitution:

page 21 } "Second. To increase the wages, and improve  
the conditions of employment of our members by  
legislation, conciliation, joint agreements or strikes."

Then dropping down to Subsection (d):

"(d) As used in the language quoted above, what is meant by the words 'joint agreements'? Were United Mine Workers of America, or District 50, or United Construction Workers parties to or bound by the provisions of any such joint agreement during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? If so, furnish a copy of all such joint agreements."

Those joint agreements are more than 1,500 in number. They are not joint agreements between United Mine Workers, District 50 and/or United Construction Workers. They are collective bargaining agreements entered into between the employer and the Union representing his employees. They have no possible bearing on this Question here. In addition to which, they will disclose the private business of the employer.

The United Mine Workers have thirty districts, 3,000 locals and 650,000 men, members. District 50 has 58 districts, 850 locals, 112,643 members. United Construction Workers has 58 districts, 655 locals and 45,000 members.

Those locals of United Construction Workers, District 50, have such agreements, but it has no bearing here. page 22 } It can't possibly have any. It is purely a fishing expedition to try to find some evidence to bolster up their case.

Take as another example, Question 34. They quote from the Constitution of United Mine Workers of America, this:

"He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the Organization. Said statistician shall make a report to the regular convention."

Now, coming to Subsection (c), they ask:

"(c) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did any person or member having been appointed for the purpose by the President of United Mine Workers of America, collect and compile or attempt to collect and compile statistics relating to District 50 and United Construction Workers or to the work and industries claimed by them, respectively? If so, what statistics were collected and compiled and what reports thereon were furnished to the President of United Mine Workers of America? Furnish a copy of all these reports."

We have another case there where they are simply fishing, hoping that something will develop in some of these reports, if there are any, which may help them get evidence page 23 } for their case. It is exactly the things that are condemned by the cases I have read your Honor, and by the Fourth Amendment to the Constitution.

Another example of fishing in violation of the Amendment, is Page 37, in which they quote from the Constitution of the United Mine Workers of America—that is Question 37:

"He shall interpret the meaning of the International Constitution but his interpretation shall be subject to repeal by the International Executive Board."

In Subsection (d) of Question 37, they say:

“(d) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did the President of United Mine Workers of America have the right to interpret or to cause to be interpreted the meaning of the Constitutions or Rules of District 50 and of United Construction Workers? If so, what interpretations of the meaning of said Constitutions or Rules made by the President of United Mine Workers of America were in effect between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all these interpretations.”

Now, we have got the same, in effect. I read from Subsection (d). There we have the same question in effect.

District 50 was organized in 1936. He is going back 14 years to find every interpretation that may have  
page 24 } been made. Those interpretations certainly had nothing to do with Laburnum Corporation. Laburnum Construction Corporation and its work down there was never heard of until after the suit was brought. It may be a big matter for Laburnum, but in proportion to the volume of business and the administration that has to be done, as shown your Honor by the figures that I gave you, as to those Districts and the Locals, the membership, why, of course, it is a matter that the head administrators wouldn't know anything about.

These interpretations couldn't possibly, all these prior years and all, be furnished. If they want to add, if there are any interpretations relevant to this matter, that conceivably would be within the purview of the decision by Mr. Justice Holmes, which suggests in that case that they should ask for any documents, correspondence that are relevant and then if, in the judgment of the other side, that given was not correct, then they could ask by a showing to have it supplemented.

I read (d). I offer the same objection as to Subsection (c) of Question 37, which also asks:

“(c) What interpretations of the meaning of said ‘International Constitution’ made by the President of United Mine Workers of America were in effect between the dates October 28, 1948, and August 4, 1949, and also after August  
page 25 } 4, 1949? Furnish a copy of all these interpretations.”

Now we go back sixty years. “What interpretations of the meaning of said ‘International Constitution’ made by the President of United Mine Workers were in effect”, not what

were made during this period involved in this matter: not even what interpretations were made generally during that period. But your Honor sees from the numerous Districts and numerous Locals and the membership, that there again they are asking for something that is impossible and is purely a fishing expedition, hoping to find something that will bolster their case.

To go through those records and answer that question and a similar one on No. 2, would take weeks and weeks. They had records stored away back. It would call for hunting up every letter the President may have written in reply to inquiry from any of those Locals, from any of those Districts, from any of the members, all upon rulings or interpretations, rather the right to inquire to do so and so under the Constitution. The mere correspondence—it is an impossible task.

In Question 85 they ask for the following:

“85. Furnish a copy of all credentials issued by United Mine Workers of America or its International Executive Board or its President or any other representative of United Mine Workers of America to each of the persons named below for his or her proper identification and use page 26 } between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, said persons being as follows:

John L. Lewis  
A. D. Lewis  
Kathryn Lewis  
Thomas Raney  
O. B. Allen

Thomas Davis  
David Hunter  
William O. Hart  
H. G. Robinson

We have no particular objection to giving the information. In fact, we have no objection to giving any information that is pertinent to this case. I have been instructed not to raise any captious objections, and even where cases are wrong in many cases, if they are properly framed, to answer them, even though we could object. But to the interrogatories as a whole, based on those objections which I stated, we are going to ask for that order, and I will cover the other points now. However, that calls for a good deal of work.

Question 86—I am giving you the principal now, on the question of what papers are called for, that part.

“86. Was John L. Lewis, as an employee or representative of United Mine Workers of America or District 50 or United

Construction Workers, required to provide automobile liability insurance or any other kind of insurance for the protection of United Mine Workers of America or District 50 or United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949? If so, who required such insurance? Furnish a copy of the policy or policies of insurance affording such protection."

That covers automobile liability insurance or any other kind of insurance. We don't know whether any one was required, but the part I am objecting to is the scope of that question. There might be innumerable policies, if there was such a requirement. Yet we are asked to furnish copies of all of them.

The same question is asked in Questions 87 to 95 for A. D. Lewis, Kathryn Lewis, O. B. Allen, Thomas Raney, also, Thomas Davis, David Hunter, William O. Hart, H. G. Robinson, the clearest possible evidence that they are fishing. Everyone they can think of, they are asking if they have got any insurance and want the papers, hoping that they might find something to bolster their case. They doubtless are asking that, hoping to find something to show agency or responsibility of this defendant for the acts alleged to have been wrongfully done by Employer, or representative of United Construction Workers.

Now we come to the most serious invasion of the rights of the defendants under the Fourth Amendment to the Constitution, Questions 95 through 103.

"95. What written reports on work performed, page 28 } on matters of policy or on organizational activities did John L. Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers submit to the International Executive Board of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

That same questions is asked for A. D. Lewis, for Kathryn Lewis, for O. B. Allen, Thomas Raney, Thomas Davis, for David Hunter, W. O. Hart, H. G. Robinson.

I am calling your Honor's attention to the form of that question, "What written reports, etc. were made"? What was meant? The question, itself, shows they cannot comply with the requirements of the law in regard to interrogatories. They can't merely surmise that something may be in exist-

ence. They have got to show what they are asking for specifically as existing documents or papers having some relevancy to the matter upon which the case is based. The very form of this question shows they do not have any such information. It shows that they are guessing, hoping that there are reports on work performed or matters of policy or organizational activity made by some of these people that may have in it some allusion to what happened down in Kentucky in July and August, 1949. That is what they are after. It is a gross perversion of a right given in asking for interrogatories.

page 29 } As I said, there are questions addressed to every one whose names they have heard of, asking about reports made backwards or forwards or between them, first about reports made to one man; second, what reports did he make, and asking for copies.

That again shows clearly the fishing expedition that they they are engaged in.

Then we come to another set of questions that is equally bad. Starting at Question 105.

"105. What written instructions, statements, reports, memoranda, letters and other papers were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer or Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers."

We have almost the identical language used in the Lorillard Case, that is what they asked for. It was condemned and the opinion written by Mr. Justice Holmes. The same thing we have here, the very form of the question shows they can't comply with the premises under which they can ask for interrogatories. They show it is simply a dragnet, hoping to find something somewhere, that somebody has said to this man down there, "You did right", or, "You did wrong", whatever you did—that is what you are hunting for. Nothing is relevant. They are not able to specify reasonably or identify reasonably the papers they ask for.

That same question goes on down through 106, 107, 108, 109, 110, 111, 112. Again I call attention to the territory that



those requests would cover. There are the numerous Districts, Locals that I have spoken of. These questions might apply to any one of them. But even if they apply only to District 50 or to Region 58, they still must meet the requirements of the Virginia Statute and the Fourth Amendment to the Constitution.

They show on their face the whole purpose and aim is a dragnet to try to bring out something, to hope there is in existence. They don't know whether there is in existence any such, or don't know whether they have ever been in existence, and they want to bring out—

Mr. Robertson: May I ask you one question? I am not as familiar with Constitutional law as you are. The Fourth Amendment relates to unlawful searches and seizures?

Mr. Mullen: Yes.

Then in Question 125 they ask:

“125. Furnish a copy of the minutes of all meetings of the International Executive Board of United Mine Workers of America held between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949.”

There again they are asking for production of papers and all which do not come within the purview of the requirements of law, which must be met, as a basis for propounding interrogatories calling for introduction of papers, documents and so forth.

The second objection that we made is to the duplication of questions.

Question 8 reads:

“8. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, that ‘This Organization shall be known as the United Mine Workers of America’, and that ‘It shall be International in scope’, and, if so, during what period or periods; and has said Constitution at any time since August 4, 1949, so provided and, if so, during what period or periods?”

Then follows 32 questions in which that identical question is asked, after quoting some phase of the Constitution, when one would cover the whole thing. It is just an imposition

upon the defendants; and in addition to that, they page 32 } have the information in their possession. They have the Constitution of the International Union, United Mine Workers of America, in which it is stated: "Adopted at Cincinnati on October 11, 1948, effective November 1, 1948". And on Page 38, Article XII, Section 1: "The next International Constitutional Convention shall be held on the first Tuesday in October, 1952."

There is the answer to these 32 questions that they ask, identical, without so much as a change of a comma. Not only is it an imposition to ask that all of those questions be answered, the same questions, but also they have the information in their possession at this time. And it is only to get information not in the possession of parties proposing interrogatories. This is a fishing expedition.

Question 14 (b) is as follows:

"(b) As used in the language quoted above, do the words 'International Union' mean the United Mine Workers of America and its Districts, Sub-Districts, branches and subordinate branches, including District 50 and United Construction Workers; and, if not, what do they mean?"

That is the language referred to in the quotation from the Constitution of the International Union, United Mine Workers of America. This question is repeated eight times in the identical form. They are bound to know they are page 33 } quoting from the Constitution. They are bound to know that the references in it are to the International Union, United Mine Workers of America. It couldn't be anything else. A large number of the 32 questions that they ask, upon quotations from the Constitution, they have the answer right in the Constitution. And anybody who understands elementary English, anybody who can understand the by-laws of a corporation, or anybody who could understand the organization of the Methodist Church, or the Episcopal Church, can understand the Constitution of the United Mine Workers of America and the Rules of the United Construction Workers and District 50. They are all perfectly clear and consistent and are no different from the by-laws of any corporation.

Question 16 (c) reads:

"(c) As used in the language quoted above, do the words 'Executive Board' mean the International Executive Board

of United Mine Workers of America, and, if not, what do they mean?"

That question is repeated nine times in the same identical words, no change of comma, even.

Question 13 (d) reads as follows:

"(d) As used in the language quoted above, what is meant by the words 'joint agreements'? Were United Mine Workers of America, or District 50, or United Construction Workers parties to or bound by the provisions of any page 34 } such joint agreement during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? If so, furnish a copy of all such joint agreements."

I have already explained what those joint agreements were, but that question is repeated four times. There are the instances of repetition which I haven't taken; however, taking those questions alone that I have referred to, there are 53 duplications which could be answered in four questions, four answers. The answers are bound to be the same. They are quoted in there.

Take another, for example, Take Question 23. I think that is a typical question.

"23. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'Charters of Districts, Sub-Districts and Local Unions may be revoked by the International President, who shall have authority to create a provisional government for the subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is page 35 } set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation, to the next International Convention'."

Then they ask questions (a) through (h), and in the first place, (a) is the usual question:

(a) During what period or periods did said Constitution so provide?"

That is one of the 32 times they ask that question.

"(b) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did said International President have the authority or right to revoke the charter or certificate of affiliation of District 50 in accordance with and subject to the provisions of the language quoted above?"

They have got the answer to the very thing they quote. It states they have got that specific power. They have got it in here, and they have got it in what they quoted, themselves.

"(c) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did said International President have the authority or right to revoke the charter or certificate of affiliation of United Construction Workers in accordance with and subject to the provisions of the language quoted above?"

Even the question shows that they know the answer. Then there is (d):

"(d) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did said International President have the authority or right to revoke or to cause to be revoked the charter of United Construction Local Union 778A or of Local Union No. 778A, District 50, in accordance with and subject to the provisions of the language quoted above?"

They go on with the whole series of questions, of which they have the answer right here (indicating), and the answer is in what they, themselves, have quoted specifically and clearly and imposes an undue burden upon the defendant to ask them to answer all of those things that they already have answered and they are contrary to the statement of the premises upon which interrogatories can be required to be answered.

In addition to those repetitions, and to other repetitions, there are more than sixty questions asked in the identical language in each one of the three sets of interrogatories that they have filed up to date, that is United Com-  
page 37 } struction Workers and the District 50, and United  
Mine Workers. So we have over 250 duplications,  
which imposes an unnecessary burden on the defendants in  
this case.

Then there are 35 questions in which the defendants are asked to interpret—I have read one or two of them—the Constitution. We have no particular objection to interpreting the Constitution. The counsel may not like our interpretation. I don't know whether they would really be bound by it or not, but we have no particular objections to interpreting it. But where there is duplication, we do have, and a lot of duplications occur therein. Of course, there is an usurpation of the province of the Court.

In a review in the Virginia Law Review summarizing Rule 30 in the Federal Procedure, which relates to interrogatories, it is said that the party cannot be required to summarize or interpret any paper to which it is a party, that that is within the province of the Court.

I assume the same thing applies, in fact it is established law, that where papers introduced in a suit to which a party in the suit is one of the signers, an objection asking him to interpret it, will be sustained. It must be by the Court.

Then, we believe that all through, that these lone 245 questions are addressed to the purpose of creating prejudice.

For example, we don't mind answering Ques-  
page 38 } tion 45, as such, but it clearly states:

"45. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'The salary of the President shall be \$50,000 per annum; Vice President, \$40,000 per annum; Secretary-Treasurer, \$40,000 per annum; International Executive Board Members, \$1,000 per month; Tellers and Auditors, \$25.00 per day when employed. Each of the above mentioned officers shall receive, in addition to their salaries, such additional sums for additional service rendered as may be authorized and approved by the President; together with all legitimate expenses when employed by the Organization away from their places of residence.' "

The question based on that quotation is this: "During the periods inquired about, did United Mine Workers of America pay to Thomas Raney, member of the International Executive Board of United Mine Workers of America, in addition to his salary, an additional sum for additional services rendered. If so, what additional?" That question can be asked, with the last half of that quotation, namely, "Did they pay him for additional services". But it is clearly put in there for prejudicing you.

page 39 } As I say, we have no particular objection to it.

Those salaries, in the face of salaries paid to large corporations, paid to men who administer the affairs of an institution the size I have shown, are nothing to be ashamed of. But they are evidently put in there for prejudice.

There is another question specifically put in there for prejudice, Question 78:

"78. What is the relationship, by blood or marriage, between John L. Lewis and A. D. Lewis; and what is the relationship by blood or marriage, between John L. Lewis and Kathryn Lewis?"

That can have no other possible purpose except to create prejudice. Anybody who reads the newspapers can know perfectly well what the relationship is, but it is wrong in an interrogatory in this place, and serves to create prejudice.

Now, for those reasons, because it violates the right of these defendants under the Fourth Amendment of the Constitution and under the Virginia law and under the decisions, as clearly demonstrated by the questions, they are engaged in a fishing expedition and because of the undue burden, the date, placed on these defendants by the duplication of questions and because the questions clearly are intended to create prejudice, we are asking that order that I have referred to.

We see no reason why these defendants should be page 40 } punished by being required to answer interrogatories as slovenly as these interrogatories are. We don't object. We have no right to object to proper interrogatories, but we do have the right to object to being imposed upon under the guise of interrogatories. And we do have the right, we submit, your Honor, to require that they reform their interrogatories and bring them within the scope of what is permitted by the law and not to impose an unreasonable obligation upon the defendants and not to have them expect to go back sixty years or to make all kinds of copies which would take weeks and weeks.

That is the basis of our prayer to the Court to send back

all three of these interrogatories. We have indicated what the questions are that should be changed to avoid duplication. They can pick them out themselves. I don't see why we should pick them out for them.

As far as the other question of a fishing expedition, of course, they are for your Honor to pass on; if he does, he can correct those. That is the basis of our request for interrogatories to be sent back, upon our objection, to be reformed and revised by the complainant.

The Court: Let's take a recess of five minutes.

(Whereupon, a recess was taken.)

The Court: All right, are you ready?

Mr. Robertson: Yes.

page 41 } Your Honor will recall that this action was instituted in December, 1949, and set for trial beginning December 11 of this year.

Your Honor will recall also that the first interrogatories filed in this action were filed in behalf of all three defendants last summer. And the plaintiff was directed to answer those interrogatories on or before September 20, and counsel for all parties appeared here on September 20 and the plaintiff answered the vast majority of the interrogatories and the Court ruled upon certain of those interrogatories as to whether they should or should not be answered. And subsequently, on September 26, all parties came before the Court, by counsel, and the plaintiff answered the additional interrogatories that the Court ruled it must answer.

Now, I will not go back to reading those interrogatories at this moment, but I wish to call the attention of the Court to the fact that in those interrogatories, these three defendants here have done many other things which they now claim we have no right to do. In the form of the questions they asked and the insistence that they be answered and the benefit they have gotten through the answers and they cannot blow hot and cold, they are committed to the course of action they took there, so far as it applies to these interrogatories.

Prior to September 20, this plaintiff filed various interrogatories against the three defendants, returnable on page 42 } September 20. None of them have yet been answered. On September 13, this plaintiff filed these interrogatories that Mr. Mullen has just discussed this morning, and made them returnable to September 20, so that they would come before the Court on that date. So when these interrogatories under discussion here this morning were formulated and filed, counsel for the plaintiff had not had the



benefit of what transpired here before the Court on September 20, where I recall in some instances the Court now has disposed of the plaintiff's interrogatories.

Then we came back here on September 26 and discussed various matters, got these subsequent dates and the Court will recall that it asked Mr. Mullen and I to get together promptly and indicate what questions we could and what questions we could not agree upon.

I undertook to do that promptly with Mr. Mullen, and did it, I think prior to September 28, as will appear from my memorandum to him, which was written on September 28. My recollection is that I telephoned him before that date. I heard nothing from Mr. Mullen until October 10, and this letter from him to me was delivered by a messenger. Prior to that time, Mr. Mullen had told me he was so busy he would let me know whether he wanted to get together or not.

"With respect to the suggestion that we endeavor as far as possible to determine beforehand what questions in the interrogatories addressed to the United Mine page 43 } Workers of America we would not object to I beg to advise as follows:-

"We shall object to the interrogatories as a whole. If, however, the Judge should rule against us on this point we list below the questions to which we will specifically object. This does not necessarily mean that we may not criticize some of the questions in any argument against interrogatories as a whole. It simply means that if we are required to answer any part of the interrogatories the following questions will be specifically objected to:

"(2), (9-e), (13-d), (19), (24-f), (28-e), (34-e), (35-e), (37-e and d), (40-b), (43-b), (45), (61) to (64), both inclusive, (78), (96) to (103), both inclusive, (105) to (112), both inclusive, (118), (119), (120), (121a and b), (123-a and d), (124) and (125). In the supplemental interrogatories we will object to (1) and (2).

Those are the ones that are before the Court. When we come to those I am going to show they are exactly the ones they asked up there, just in reverse.

This is the case where the plaintiff seeks to recover \$500,000. It is an important case in this Court. It is a case where there are three defendants, and all the witnesses, page 44 } and many of the key witnesses are out of the state. We conceded here this morning that the Court had

no inherent power to compel their attendance. And Mr. Mullen has stated prior to this time that they will make no commitment for any witness whatsoever to attend here.

These interrogatories have been framed and submitted in good faith after the most painstaking study and preparation. In view of the hour and a half that Mr. Mullen has taken here this morning, and the scope of his argument, it is perfectly obvious that we are going to have to take these depositions up one by one seriatim. I am going to ask the Court to do it. If Mr. Mullen was too busy before we got here today, I ask the Court to do it today. I say the seriousness and importance of the case merits whatever time is necessary.

It seems to me that the necessary time will be minimized if I reply generally to his argument against the interrogatories *in toto*. And then we take them up one at a time and dispose of them, rather than try to group them in any such way as Mr. Mullen attempted to do, to which, of course, I do not agree.

So if the Court will permit me, I will make a general reply to Mr. Mullen's argument, then come to the specific question. I call the Court's attention to one fact at the very outset. When Mr. Mullen charges us with having the Constitution of the International Union, which I think we page 45 } have, and in one of the other times when we were here, he stated specifically and categorically that there was no Constitution of it, and the reason that we need this Constitution, we have had these things, these questions are based on these various Constitutions, Rules and Regulations; but if all of their witnesses are out of the State and if we have no assurance that they be here, does your Honor think for one minute if we had offered this to the Court at the trial of this case, out of a blue sky, that it would have been received?

Mr. Mullen: May I interrupt?

Mr. Robertson: You may once. I interrupted you.

Mr. Mullen: We offered to furnish you the Constitution, which you could produce in Court.

Mr. Robertson: I don't remember any such offer. The record will show it now. Do you still hold that offer?

Mr. Mullen: We never said there wasn't any constitution of the United Mine Workers. We did say there was no Constitution of United Construction Workers or District 50.

Mr. Robertson: That is one reason we have asked for what we have asked for. We don't want to quibble about what you call it. We want what actually is that governs these three different defendants.

Now, if your Honor please, I ask you to let me read you the names of these three defendants. United Construction Workers Affiliated with United Mine Workers of America; District 50, United Mine Workers of America, and United Mine Workers of America, the three defendants.

Now, if you go to the notice of motions of judgment filed in this case, you will see that our theory of the case is that these three different defendants are either component parts of one whole, to-wit, United Mine Workers of America, or they are instrumentalities or agents of the United Mine Workers of America, and that the three defendants are so inter-related and interwoven that they act through their members and component parts, or through their agencies, or through both.

I repeat what I said when we were here before. I make this statement based on the most exhaustive study that I, Mr. Lowden, Mr. Moore and Mr. Bryan are capable of making, that these things cannot be intelligently understood and co-related to each other, and that they are not intended to be, but they are intended not to be. That is a fair statement based on anybody, on a study of them by anybody, including the Court.

Mr. Mullen: I object to him imputing improper motives.

Mr. Robertson: I am not imputing the motives. I think it is very skillfully and artfully done. I don't think you did it. I certainly didn't do it.

If your Honor, please, I think much of what Mr. Mullen says here today comes with poor grace and too late, because

I understand, I think the working notes I made, page 48 } and my associates made when we were there, showed that he agreed without any strings to it, to answer certain interrogatories; that he challenged the right to be required to answer certain other interrogatories and the Court ruled that some of them he didn't have to answer, some of them he did have to answer. Some of them he need not answer as tendered, but must be tendered in modified form and a modified form was worked out. Then on those occasions, that what he says now as to any interrogatories, except those before the Court today, come too late. He did reserve the right to urge any and all objections he chose to urge against these interrogatories here today against the United Mine Workers of America.

If your Honor, please, at the outset of Mr. Mullen's argument, he said that these instruments, documents, records that we have called for could only, as I understood his argument, could only be acquired under *subpoena duces tecum*. Now,

if your Honor please, I am not naive enough to come here and ask this Court for irrelevant and immaterial information, inadmissible information. I do ask, I submit I am entitled to have every bit of information in answer to these interrogatories which tend to show the inter-relationship as component parts or as agents each of the other of these three defendants.

I can speak with some authority and with some feeling about the question of whether this Court right now, at this moment can ask any, demand that any of these page 49 } parties bring anything here that this Court says bring here, without any *subpoena duces tecum* or anything else, and the Court has that authority. That fact is set forth in the decision of *Robertson v. Commonwealth*, and it is discussed in the briefs and it is discussed in oral arguments and it appears in the record. And I think it appears in the opinion and the reason it runs through the whole thing, if the Court didn't have that power, the Court could not function. And we are not going to stop with any tweedle-dee-tweedle-dum thing, to have a *subpoena duces tecum* issued when the parties are right there before the Court, within the jurisdiction of the Court. I cite that case as my authority for that statement.

I have not come here unprepared on what questions are proper in the form of interrogatories. There is a discussion of it in Burke's Pleading and Practice, the last edition. You can get it there largely in one paragraph. There are some decisions in Virginia. I do not recall them at the moment. I have it at my file in the office. I can get it within fifteen minutes.

The rule as to what is admissible is the rule which applies in a pure bill of discovery, and you can make the distinction between a pure bill of discovery in equity and a bill for discovery and relief.

A pure bill of discovery means exactly what it says. You are trying to discover something, but you are not page 50 } asking for relief and in that instance, the things do not, the interrogatories do not have to be sworn to.

If it is a bill for discovery and relief, it must be sworn to to show the Court that they are acting in good faith. The rule which determines the propriety of interrogatories in a civil action is the rule which applies where a pure bill of discovery is sought. And you will find that in Burke's Pleading and Practice, with cases cited.

Then in Lyles' Notes on Equity Pleadings where he discusses the difference between the pure bill of discovery and a bill of discovery and relief, he says that in a pure bill of

discovery, which is the rule that applies here, you can get any information which is helpful to aid you in the proof of the case, where it is relevant, necessary and material, but it need not be vital to the proof of your case.

I can get those authorities, it is just a question of going to the office and getting them.

This case here, so far as the procedure is concerned, is governed by the law of Virginia, and not by any Federal rules of procedure and not by any Federal decisions in matters of interstate commerce. I submit it is a far cry from anything we have asked here, to a violation of the Fourth Amendment against illegal searches and seizures. The law your Honor applies here is the procedure law of Virginia, and the substantive law which your Honor will apply here will be the

substantive law of Kentucky, where this cause of page 51 } action arose. They have made the point. It was stated here repeatedly; when we were here on September 20 and September 26, they made no point of the correctness and incorrectness of the service. They expressed this desire to cooperate in giving information and then we can't even get them to give the names and addresses except under compulsion of the people who are in this courtroom this morning.

As I have said, these interrogatories have been prepared as result of the greatest study, the most painstaking preparation and in good faith. And we have got these three copies, which one of them is the Constitution of the International Union, United Mine Workers of America, the one to which Mr. Mullen referred. We got it from one of our labor services in Washington, D. C. It is not certified. If I were to offer it in Court as it is, Mr. Mullen, I think, would be the first one to object. Whether he did or not, I would be a fool to offer any such thing as that, because it certainly could be ruled out upon objection.

He said, and before I leave that, it was said here that John L. Lewis is the Czar of the United Mine Workers. Before a matter gets to the International Executive Board, which represents the membership of the Union, John L. Lewis'

word is the word of God, subject to be overruled page 52 } by the International Executive Board. And the word of the International Executive Board, except when you are going to expel a man from the Union, I believe is final, subject to review by the General Convention, and John L. Lewis, according to the wording of that thing, has the right to interpret that Constitution and apply it as he sees fit, in his uncontrolled judgment. And when we submit this thing to the Court or Mr. Mullen gives us a copy of it,

unless in some of these interrogatories that we have asked here, we don't know who is coming here to say that is the written constitution, but John L. Lewis has changed it. Mr. Mullen says now that there is no such thing as a Constitution of District 50, of the United Construction Workers. We have got this thing, here, that we got from a labor service, "Rules of United Construction Workers, Affiliated with United Mine Workers of America, March 15, 1949, 900—15th Street, N. W., Washington, D. C." If that is what they operate under, that is what we want. We want them to produce it here so we will have it in a form admissible in evidence, the Constitution of the United Mine Workers, these Rules and Regulations of the United Construction Workers, and these Rules of District 50, United Mine Workers of America, March 15, 1949.

So, to say that those things upon which our interrogatories are based, are irrelevant in this proceeding, is like trying to discuss the Constitution of the United States without having a copy of the Constitution available to you. And page 53 } it is an argument that doesn't merit the thought of a man of Mr. Mullen's ability to come here and say we have got this information in our own possession, when he ought to know we have got it in a form that is not admissible in evidence and that this Court has got the power to require them to make it available to us in a form that will be admissible in evidence. That is what we are asking this Court to do.

Mr. Mullen made the point that most of these questions are irrelevant and immaterial and inadmissible. I didn't think they were going to like them. I have intimated here before that I thought of obstacles that could be put in our way, would be put in our way to keep us from getting information.

He says that he wants through testimony under oath to show the relevancy of what we ask for and the materiality of it and whether or not it is an unjustified fishing proposition. I say that we have Hamilton Bryan, the President of the plaintiff company here prepared, if the Court wants him, to testify under oath and he has lived with this thing from its inception down to this minute.

I don't think it is any use going into the different questions now, like Mr. Mullen did, because it is perfectly obvious from what he said that we have got to go over them all anyway. I will stop and come back to that. I do say this, your Honor, when we come to that, it is going to be page 54 } tedious. It is going to be irritating. It is going to get boring. But I submit that those questions



are framed and submitted in good faith. I think some of them are probably too broad and should be narrowed in their scope here and now today, and I ask the Court to bear with all the parties and get these things thrashed out here now, today.

One purpose of our question is that we want to show the interrelationship, the interwoven scheme of things between these three defendants, in support of our allegation that they are acting through their component members who are or are not also their agents. You can't say that that is not relevant in this case, that that is not material in this case, that that is not admissible in this case, nor in the form of interrogatories, when they have put us on notice that they may not have anybody here for this hearing if they deem it unnecessary.

Of course, if they thought they could make our case collapse without having them here, there wouldn't be anybody here but us. Then Mr. Mullen, having argued this morning, you have got all this here in your testimony all right, put it in evidence—how far do you think I would get? How far do you think he would have a right to let me get away with any such stuff as that?

Mr. Mullen charges that we have been guilty of inexcusable and persecutory repetition in these three sets of interrogatories of these three different defendants. What page 55 } we have a right to do and are doing is to show the interrelationship between them so far as it applies to these events between October 28, 1948, when Laburnum had his first contract to go to work out there, and August 4, 1949, when the thing came to an utter collapse through the illegal acts of all three defendants acting as agents and component parts of each other.

Just to end this first phase of what I have to say, we have three further short sets of interrogatories here which we are going to submit this morning and ask the Court to either rule on them or rule on them here in time for it to be answered before the trial date of this case. I want to anticipate them to say this, those interrogatories demonstrate—perhaps they don't demonstrate it—but those authorities ask for specified copies of their official newspapers of one of these defendants and the file has been available to us through the courtesy of someone else and we have copies of them now, and those copies are in our possession. We think they contain information which is necessary to the proper presentation of our case. And we are going to ask for them in our interrogatories. That is what they won't admit, that these papers are correct copies. We still want other copies of them so we can return these to where we got them.



If your Honor, please, I think I have covered the ground generally. I suggest that we go—I think as long as I am presenting the interrogatories and they are challenged, that I should present them and if they are challenged seriatim, then I will say what I have got to say, then Mr. Mullen say what he has got to say. Then I have the right to close the argument. There is no use of Mr. Mullen shaking his head and saying it is too tedious or takes too long. That is the way to proceed. I will cooperate in making it short. There is plenty of time in a court of justice to assert a \$500,000 claim for damages, which has worked any such results as we claim have been represented and we claim it in good faith, on this plaintiff.

Mr. Mullen: I am not objecting to time. I hate to take the time. I am objecting to Mr. Robertson trying to assume our position on these interrogatories. We are here by agreement to meet, to state my objections. I don't think it should be turned over to him to start them and for me simply to come in the middle to answer them.

Mr. Robertson: I have said. I want to hear what the Court thinks.

Mr. Mullen: I want to say a few things.

Mr. Robertson: He doesn't like me to do that. He is assuming this pontifical air here—

The Court: I think everybody is getting along all right this morning.

Mr. Robertson: He is asserting to himself the right to open and close, when I am offering the proof.

The Court: Wouldn't it be proper first for the page 57 } Court to pass on Mr. Mullen's position?

Mr. Mullen: May I say one or two words?

The Court: Yes, you may reply to Mr. Robertson.

Mr. Mullen: Your Honor, please, you will recall that Mr. Robertson has said he has not been able to get these introduced. In reading Question No. 2, I stated:

"2. Furnish a copy of the Charter, Constitution, Rules, Laws, By-laws and all other regulations and rulings of United Mine Workers of America in effect between the dates October 28, 1948, and August 4, 1949, together with a copy of all changes or revisions made in same since August 4, 1949."

What we objected to were the words, "All regulations and rules in effect" from that time.

Mr. Robertson: I told you I wouldn't interrupt you. I want

to be heard on each separate interrogatory and not have Mr. Mullen "pooh-pooh" them in the way he is doing.

The Court: As I understand, your remarks are being addressed to your motion?

Mr. Mullen: The motion as a whole, so that what he has stated about not being able to prove those, I stated this morning with the proper question, it would show the difference between a proper question and a fishing expedition and that we would be glad to answer it. I have already stated that we had no objection if these were revised, to in-  
page 58 } terpreting as they have asked in some 32 questions the Constitution. We are not going to fight against that. We are fighting against simply the dragnet in those questions I took up, and on the burden imposed by duplication.

We have no quarrel at all with what Professor Lyles says. The very statement of it by Mr. Robertson that they must be relevant, material, that is all we contend, that these are not relevant and material.

He states he can't possibly understand what it is, he wants to find out. It is perfectly clear. The Union is the International Union, United Mine Workers of America. It has 30 Districts. One of those Districts is District 50, an autonomous District. The other Districts include minors, District 50 does not. And it has its own Conventions, its own administrations, its own functions. It is an autonomous district of United Mine Workers.

United Construction Workers is a division of District 50. It and District 50 are as specifically stated in this and in both of those, bound by and operating under the Constitution of the International Union, United Mine Workers of America. Where there is anything obstruse about that, I can't see. It is perfectly clear. As I say, we are perfectly willing to interpret, we don't want to in doing that answer one question 32 times.

Mr. Robertson addressed himself largely to the  
page 59 } question of time. We take no blame for that whatsoever. They started this suit in December, 1948.

Mr. Pollard: They started this suit in December, 1949.

Mr. Mullen: They started this suit in December, 1949. They never filed these interrogatories until September. We filled interrogatories away back in June. They took three months to answer them. Then they commenced filing these lengthy interrogatories to us, didn't want us to have any time to do it. Now, if there is any delay in this matter, it lies with them, not with us.

The Court: The Court will say this: The Court has no fault to find with either side, up to the present, for the co-operation it has received in this matter.

Mr. Mullen: That is just the situation. I do not see that Mr. Robertson has at all answered the objections made to these, either on the ground that they are fishing expeditions or that they were unduly burdensome in their tremendous duplications, 200 duplications in them.

Mr. Robertson: If the Court please, I submit that is not a proper argument. That is in argument of his motion to return everything, because the whole thing is improper and if that argument is to be addressed to each specific question, we are consuming time for nothing on any such page 60 } argument as that.

Mr. Mullen: That is your opinion. I ask the Court if I may proceed.

The Court: Well, go ahead.

Mr. Mullen: As I was saying, I do not see that he has answered the question at all, the question of undue burden and duplication. He speaks of the hearings heretofore on the interrogatories addressed to the United Construction Workers and District 50. We objected to a great many things in those. We did not then know what was in here to throw a very different light on the matters. We now renew our objections to those because of what I have said, because of the duplication, because all of them put together constitute a gross fishing expedition.

All we are asking is that they reform, after your Honor has passed on certain questions.

. . . . .

The Court: I suspect I had better rule on your page 61 } motion to require the plaintiff to reform these several interrogatories to the defendants. The Court overrules that motion.

In regard to the interrogatories addressed to the United Mine Workers of America, then we may proceed and you may take up any question that you like, object to any of them and the Court will pass on them as we go along.

Mr. Mullen: As I understand, your Honor overruled the motion to send them back for reformation.

The Court: Yes.

Mr. Mullen: Then, of course, we except.

The Court: You except, of course, to the ruling.

Mr. Mullen: Then, your Honor, as we have written in that

case, we only object to certain questions, why is there any use to read all of these questions?

Mr. Robertson: That is the only way I can get them answered. I have been trying to get them answered since the 13th of September. I want the Court to rule on them now.

The Court: Of course, he has made a general exception to all of them. Then he comes and says he wants to make specific objections to a certain number.

Mr. Robertson: Does he mean except those, he is going to answer the others?

The Court: The Court will require him to answer the others. I don't see any need—

Mr. Robertson: I don't either, if the Court is page 62 } going to do that.

Mr. Mullen: The whole purpose is to simplify the matter, as your Honor has requested.

Mr. Robertson: I offer the letter and ask the Court to mark it filed, and I offer it in evidence.

The Court: Plaintiff's Exhibit No. 1.

Mr. Pollard: The defendant, of course, will object to that.

The Court: The defendants object to the introduction of this letter, Plaintiff's Exhibit 1.

(The letter referred to was marked Plaintiff's 1, and filed with the Court.)

Mr. Robertson: When we come to these specified questions, you want to hear from Mr. Mullen first, or from me?

The Court: I think Mr. Mullen said he would prefer to do that, then you can answer him.

Mr. Mullen: (The first objection is to Question 2, to that part of Question 2 which calls for any Rules and Regulations that were in effect between the dates of October 28, 1948 and the present time. I think I made a paraphrase of that.

Mr. Robertson: Have you finished?

Mr. Mullen: No. That question is objected to, page 63 } that part of it, on the ground that that part of the question is in contravention to the Fourth Amendment of the Constitution of the United States and imposes undue burden on the defendants. The question is unlimited as to the time and the rules or regulations pertinent to the issue in this cause and calls for immaterial testimony.

As I have already stated, they were organized sixty years ago. It would take a month to make the examination that they ask for.

That is all on that.

Mr. Robertson: If your Honor pleases, you will notice it does no such thing. It says: "Furnish a copy of the Charter, Constitution, Rules, Laws, By-Laws and all other regulations and rulings of United Mine Workers of America."

That is what I am driving at, is to get these things which I think control them. I tried to make it broad enough to cover the whole thing, it says, "In effect between the dates October 28, 1948 and August 4, 1949", less than one year, "together with a copy of all changes or revisions made in same since August 4, 1949."

The reason I want that—there is no use of reading it here—John L. Lewis has a right to change it if he wants to.

Mr. Mullen: Nothing of the kind.

Mr. Robertson: Don't interrupt me. I can read page 64 } it here. He has a right to interpret it as he sees fit. We want to know. It is not for any long period of time. We want to know from October 28, 1948, when we first went out there, when we first got our contract out there, down through the time they ran us off of the work, that the work was taken away from us, down to the present time, are these things complete. Are there any changes to them. If so what are they? If so, gives us copies of them. I ask for you to admit these three to go in testimony, or give us copies of them.

Mr. Mullen: I told you three or four times we would admit it. We thought it a proper question to call for those. We admit it.

Mr. Robertson: Because we are not sure they are complete. We want to know whether this Czar's right to change them has been exercised or not. We want these things and we want them brought down to date.

Mr. Mullen: He has no more power than the President of a corporation. It is so stated in there, everything he does is subject to—

The Court: Is it stipulated that they may be introduced in evidence?

Mr. Mullen: Certainly we will stipulate that. We have offered it every time I have been up here.

The Court: Then, if it is stipulated that they page 65 } may be introduced in evidence, what you would like to know is whether or not those constitutions and by-laws have been amended since their enactment.

Mr. Mullen: We will answer that.

The Court: That will answer that question?

Mr. Robertson: That will answer it.

Mr. Pollard: May I interrupt a minute?

Mr. Mullen: Yes.

Mr. Pollard: This was adopted on October 11, 1948, became effective November 1, 1948.

Mr. Robertson: Which one are you talking about?

Mr. Pollard: The Constitution of the United Mine Workers.

I don't see where the date they request, October 28, 1948, is material to the facts which are alleged to have happened in Kentucky. Do you think if we put in this one, it ought to be enough and ought not to put in one in effect prior to that?

Mr. Robertson: We have already stipulated and agreed upon it now, Mr. Pollard tries to kick over the traces. We are entitled to know whether these things are down to date, whether this is in effect now or whether it is not. They might have changed them to try to cover up the tracks of the agents.

Mr. Mullen: Mr. Pollard isn't talking about page 66 } that. He is talking about you asked between October 28, 1948, this Constitution became effective three days later, November 1, 1948. That is what he is talking about.

Mr. Robertson: I want the other Constitution, too. I have seen them. There are very little changes in them, I think.

Mr. Mullen: There are no changes practically.

Mr. Robertson: All right, if you say there are no changes, I will accept that, if you will be bound by these.

Mr. Mullen: Let me finish. There are no changes involving anything here. There are such changes as this—

Mr. Robertson: I can help you, if you will say there are no changes in this Constitution in comparison with any prior Constitution, which changed the application of that Constitution to this situation, on the date of its adoption, I will accept that statement, without going any further.

Mr. Mullen: No, I won't make that statement.

Mr. Robertson: You see, I am entitled to it.

Mr. Mullen: Here is the thing, "to demand not more than six hours from bank to bank in each 24 hours, not more than five days a week shall be worked by each member of the organization." Before that it was 7 days, 8 days. That has been changed by the Constitution, nothing in the basic covenants of it.

page 67 } Mr. Robertson: I told you—

Mr. Pollard: I don't think Mr. Mullen heard you question.

Mr. Robertson: The Court heard it. I think I am speaking loud enough. I asked him would he agree that this Constitution which was adopted on October 11, 1948, and became

effective November 1, 1948, so far as it applies to this case, was identical with whatever was in effect beginning October 28, 1948. He said he would.

Mr. Pollard: He said he would not.

Mr. Robertson: He said if—

Mr. Cowherd: He said he would not.

Mr. Robertson: I say, if he won't make that stipulation, I am entitled to the one in effect on October 28, 1948, everything in effect from that down to this time.

Mr. Mullen: I submit this occurrence they claim happened in July.

Mr. Robertson: If I don't get that, and I come into Court with that, they are free to pull something else out of the hat and say, "You are all wrong. This other thing applied all the time you are talking about." I have a right to be safeguarded against any such thing as that.

Mr. Mullen: Your Honor please, the date alleged is July, 1949. Now, all they could be concerned with us what constitutes the rules that were in effect, what Constitution and Rules were in effect at that time and since then, and I think they are entitled to that. Prior to that, they have nothing to do with it. As far as any of this is concerned, they were only affected by what was in effect in July, 1949.

Mr. Robertson: Your Honor please, there were threats against us there almost from the beginning. We have got a right to show from our observation how they tie up, who is responsible for them.

The Court: That wouldn't be a tremendous task to furnish those.

Mr. Mullen: We will give them copies of those. We can say there is no changes in these from the date they were in effect, down.

Mr. Robertson: If you will tell me that these are the same provisions that were in effect, so far as this case were concerned, on October 28, 1948, and subsequent to that, I will accept your statement and won't ask for anything else.

The Court: Can you agree to that?

Mr. Harris: Judge, the point we want to make clear, and we want to avoid any waiver of that point in any form is that the critical times in this case begin with the dates alleged in his complaint, that we did a wrong. And he claims that we did wrongs in July, 1949, in his complaint. We have given and it is stated here this morning that the Constitution in effect in July, 1949, up to the present time, we have handed him, and it can be introduced in evidence.

But at no point in this case do we think we should



start going and bringing in things that have nothing to do with the case. It is the integrity of our position that the time that is material to this Court begins with the time mentioned in his complaint, when he said we did things to him and to go back of it is to bring in wholly irrelevant and immaterial bits of evidence. And he has that date specified in question after question hereafter. Do I make myself clear?

The Court: I see what you are talking about. What is your answer to that, Mr. Robertson?

Mr. Robertson: We have got a right to know what was the setup when we first went out there in Kentucky and show the background of this thing. That is going to be the testimony in this case. They have asked in their questions, what we did in that whole time, from the time we first went in there, October 28, on down to date. They went to know what we made, what we didn't make. We want to show from the time we got our contract, what we were up against, as result of their threats, what they were doing, which culminated in these things, which were done on July—I think it shows there they made one threat against us—

Mr. Bryan: On July 14, 1949. There had been threats, all sorts of stuff before that.

Mr. Robertson: There had been threats before page 70 } that. Why, if they say it is all right, Mr. Mullen was willing personally to agree to it, they called him off, what is the bug under the chair?

Mr. Cowherd: I would like to speak to that. We want to narrow it down to those dates. We have those other copies. We have no objection to letting them in as such, those particular ones. When it runs to the whole case, we must be consistent. We think the dates are the dates upon which they allege we first came on the job, to do anything wrong. If it were two or three weeks before the actual date complained of, we wouldn't object to that. We wouldn't object to anything they claim prior to the date upon which they claim we did a wrong.

Mr. Robertson: That argument boils down to this, we can't show any relationship of principal and agent or principal and component members and parts an hour before they came on the job and threatened us with physical force to run us off, or an hour before they called Bryan and told them to get off there.

Mr. Cowherd: This is a nine-month interval he is talking about. This Constitution was adopted prior to the date he stipulated, the giving effect date three days later, all of which was nine months before he claims any wrong was done.

Mr. Robertson: If any counsel of record for page 71 } these defendants will make a statement of record so far as the issues involved in this case is concerned, that these three sets of provisions were in effect on October 28, 1948, I don't ask for anything else.

Col. Harris: If the Court pleases, I feel that I should make it clear to the Court that the form of questions, "bug under the chip", we object to. We have come into this Court, as stated by Mr. Mullen. We are not making objections to a lot of questions that we thought we had the right to object to. We do want the issue which we understand will be tried before a jury, we do want the issue kept clear. We do not want in any reference to any question to appear to waive our basic contention that anything prior to July, 1949, is wholly irrelevant. We are trying to come into this Court and make a fair and honorable answer to interrogatories, which the consensus of opinion of these lawyers in Washington is that they are relevant and call for relevant and material evidence. Such questions, we are not objecting to. Every objection we we put in is, we think, a sound objection and not a hyper-technical objection. We are not here to engage in intellectual gymnastics with the gentlemen on the other side, but we do think that a jury trial must be in accordance with the statutes of the State of Virginia.

Mr. Robertson: Your Honor, please, the gentleman, of course, hasn't had the benefit of being here either page 72 } on September 20 or on September 26. It is my understanding of the Court's former ruling that whatever questions the Court directs to be answered here, the Court reserves its right here to rule all out, if the Court thinks they are not admissible.

Col. Harris: I appear under a misapprehension, if the statement just made by counsel is correct. I understood, I represent in my ordinary business the International Union of the United Mine Workers of America. I understood the interrogatories to the International Union, United Mine Workers of America, we were to have our objections in today and that they have not been ruled on by your Honor heretofore. Your Honor may have made rulings—

Mr. Robertson: I think you misunderstood me. My understanding is that when we get into the jury trial, and as we go forward with the introduction of evidence, and that as the pattern of the case appears, and then if any of these interrogatory answers are offered by anybody, the Court will then rule whether they come into evidence.

The Court: That was my understanding. Is that yours, Mr. Mullen?

Mr. Mullen: Will you read that?

The Court: In other words, you can object to the introduction of any part of these interrogatories at the page 73  $\frac{1}{2}$  trial of the case.

Col. Harris: But you were not dealing with United Mine Workers of America at that time, were you?

Mr. Robertson: Yes.

Mr. Mullen: He meant this, now if he requires them to be answered, that still doesn't bar us from objecting at the time of the trial.

Col. Harris: I understand that, but we are still arguing upon matters that are material and important here.

The Court: Exactly.

Col. Harris: The right to make objections at the trial does not forfeit our right to interpose objections that are carefully considered today?

The Court: That is true.

Mr. Pollard: May I say something?

The Court: Yes.

Mr. Pollard: This Constitution, as has been stated, went into effect November 1. They asked for the Constitution in effect beginning October 28. I don't think that the plaintiff's have shown how it is in any way material what was in effect between October 28 and November 1, certainly on those three days—

The Court: Was October 28 the date of the contract?

Mr. Pollard: That is the date of their contract.

Mr. Cowherd: No.

page 74  $\frac{1}{2}$  The Court: Were those the people you were doing the work for?

Mr. Robertson: Yes.

The Court: Gentlemen, I will allow this question to be answered.

Col. Harris: We reserve an exception.

Mr. Pollard: Exception.

The Court: For reasons stated.

Mr. Mullen: That relates to the Rules and Regulations portion of the question, that we are required to go back sixty years?

The Court: I don't undersand you have to go back sixty years on that, Mr. Mullen. These Rules and By-laws are in pamphlet form. I assume that those before the amendments were made were in pamphlet form. Won't you just furnish copies of those that were immediately prior to the ones?

Mr. Pollard: As to any rules that were made in 1890, it has been overruled? It is still in effect, I would assume.

Mr. Cowherd: If your Honor please, we have carefully

considered this because the duty falls largely on me personally to try to correlate and corral all of this voluminous material. I was concerned as a practicing lawyer, if perchance they could find some little document that we didn't know anything about that might have been passed page 75 } on thirty years ago, or 20 weeks ago, that had no remote connection in this case, produce it in Court and say then we should forget our defense, we should have our testimony moved out of Court because we were toying with the Court, as I understand has been said heretofore with reference to us, have some kind of adverse ruling under Virginia procedure thrown at us, because we failed to turn up with some insignificant ruling.

If this Court now rules we have to produce the Constitution, I see no objection; but if we are required to produce anything that might conceivably be charged to be by the eminent counsel for the opposition, a regulation or a ruling in effect, and that would include anything that hadn't been revoked since 1890—

Mr. Robertson: No, it doesn't.

Mr. Cowherd: We would like to have that clarified in the record. What are we being asked to produce?

Mr. Robertson: You are asked for the rulings from October 28, 1949, down to date. I think it is a reflection on the Court to say to make an effort in good faith, and some little trivial thing found here, that the Court would strike it out, of course the Court wouldn't do it.

Mr. Cowherd: That is not my understanding of the word "effect".

The Court: Don't you gentlemen have all your rulings combined?

page 76 } Mr. Cowherd: No, sir, we do not. It would be an immaterial ruling where one man would write in and ask a question under so and so of the Constitution, am I required to pay dues for the month of April, and May and June, 1899.

Mr. Robertson: We only want the rulings from October 28—

The Court: Why can't we simplify the matter? We don't want you to go back sixty years.

Mr. Robertson: Will you state your ruling in the record? All I am asking for is from October 28, 1948, down to date. I am not asking him to go back behind that date. That is not such a terrible thing, from that time.

The Court: You want the rulings that were put into effect between those dates.

Mr. Cowherd: Just a moment. I have an objection to

that. Suppose the District President of the State of Washington writes in and says XYZ Coal Company has asked me for an interpretation, does the present national contract affect our tonnage rate under the article of the Constitution as affecting diggers of coal in the State of Washington.

Mr. Robertson: We are entitled to show the interrelationship between these different people. That is the only way we know to get at it.

Mr. Cowherd: The question should be stated as to form, as to what rulings—

page 77 } Mr. Robertson: I am stating what I have asked the Court to do.

The Court: What do you say?

Mr. Cowherd: I suggest he narrow it down to any rulings in anywise connected with the case at bar, or in anywise connected with relationship, if he wants, between the components of the organization, if she desires to call it that, dealing with the subject matter under litigation, not some man who wants—

Mr. Robertson: I don't want to put myself at their mercy that way. I want them all. The Court can rule which ones apply. I am not willing to accept their statement. They have already said everything I asked for is irrelevant. I don't want any such ruling as that.

Mr. Mullen: The Supreme Court of the United States said that was the way to call, on those relevant; then you objected they were not relevant—

Mr. Robertson: I think they are relevant, though, here from the date of our contract down to the present time.

Mr. Mullen: It will take months.

Col. Harris: May I give your Honor an additional bit of information? The United Mine Workers of America mine coal in 26 different states. The total membership of the mine workers of District 50 and the Construction Workers runs to 600,000 men.

page 78 } Mr. Robertson: I am willing to leave out "all other regulations and rulings."

The Court: All right.

Mr. Robertson: If they try to introduce any of them, I am. Of course, they can't blow hot and cold on that.

The Court: We are scratching out, "and all other regulations and rulings". It will read, "Charter, Constitution, Laws and By-Laws". That ought to be simple enough.

Mr. Cowherd: No objection.

The Court: No objection, now that we have taken out "all other regulations and rulings".

Mr. Cowherd: Yes.

Mr. Pollard: We still object as to the scope of the time.

Mr. Cowherd: As to the date.

The Court: All right.

Mr. Robertson: The next one.

Mr. Mullen: That is 9-e.

Mr. Robertson: I am asking that you read the whole question and subsection, so you can get the content of what we are driving at. If you don't, I will.

The Court: I think that is fair.

Mr. Mullen: Question 9.

"9. Did the Constitution of United Mine Workers of America at any time between the dates October 28, page 79 } 1948, and August 4, 1949, and also after August 4, 1949, provide that, among other objects, it was an object of United Mine Workers of America to do the following:

" 'First. To unite in one organization, regardless of creed, color or nationality, all workers eligible for membership, employed in and around coal mines, coal washeries, coal processing plants, coke ovens, and in such other industries as may be designated and approved by the International Executive Board, on the American continent',

"and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) With respect to the 'one organization' mentioned in the language quoted above, were the members of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, a part of this 'one organization', and, if so, during what period or periods?"

We are not objecting to that. We will get the whole answer as to proposed organization, right there.

The Court: Let me read the whole thing.

(Pause, while the Court examines said document.)

The Court: All right.

Mr. Mullen: Subsection (c) is next.

page 80 } "(c) With respect to the 'one organization' mentioned in the language quoted above, were the members of United Construction Workers at any time between

the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, a part of this 'one organization', and, if so, during what period or periods?

"(d) With respect to the 'one organization' mentioned in the language quoted above, were the members of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, a part of this 'one organization', and, if so, during what period or periods?

"(e) With respect to the 'such other industries as may be designated and approved by the International Executive Board; mentioned in the language quoted above, what were the designated and approved 'other industries' between the dates October 28, 1948, and August 4, 1949; and what have been the designated and approved 'other industries' since August 4, 1949?"

. . . . .

page 81 } Col. Harris: What is meant, this man was in the construction business. That is, Mr. Bryan is operating the Laburnum Construction Company. Then District 50 isn't limited to Construction Workers. It takes in multitudinous types of workers. What difference does it make in this case if there were chemical workers, if there were men working on other jobs, all of the varied industry of America? What has that got to do with the simple question that deals with the Laburnum Construction Company?

Mr. Robertson: It shows they are one component part of the parent company.

Col. Harris: It has no tendency logically or factually to prove the component part, to show the size of District 50.

Mr. Robertson: I am not asking the size. I am asking what other industries it included.

The Court: What relevancy do you say that has to this matter, Mr. Robertson?

Mr. Robertson: I think it shows the course of interrelationship between the parent organization and its component part of it, or this agency.

Mr. Cowherd: It would be simple enough to answer—

Mr. Robertson: Was the International Executive Board reaching down, approving things all down through this District 50?

Mr. Cowherd: It would be very simple to ask whether the industry complained of, the industry complaining, page 82 } had been accepted into the group.

The Court: Why not ask the question about this



particular industry you are concerned with? That would seem to me to be relevant.

Mr. Robertson: Except I think this, your Honor, I think the whole course of dealing, as I understand the law of agency, the whole course of dealing between United Mine Workers and District 50—how far, of course, District 50 is a creature of the United Mine Workers, that is what we are trying to show. And in the course of dealing with this parent, with this creature, it is very relevant showing the agency. If they did it in just one instance, that is one thing. If they did it nationwide, as we believe it did, we would like to have the jury know that, and say if the United Mine Workers is sitting up there, they are pulling the strings for District 50 all over the United States, taking this industry, letting that one out, expel this one. That course of dealing in itself could be conclusive proof in the eyes of the jury that District 50 was the Agent of the United Mine Workers, that United Mine Workers was acting through that instrumentality.

Mr. Mullen: You would have to go much farther than that to show agency. That has been decided in the case of United Mine Workers. They are not responsible for that Local Union.

Mr. Robertson: I don't know about the relevance of these things. That will be proved at the trial. They ask me why I claim it is relevant. I say that we say under the law of Kentucky, I am prepared to argue at any time, under the substantive law of Kentucky, it is relevant.

Col. Harris: Of course, the questions of procedure, as the gentleman stated during this hearing, are governed by the laws of Virginia, and the questions of admissibility of evidence as such are questions of procedure.

Now, then, we have 26 states. They bear no relation whatsoever to the construction industry. This question is framed and the argument is directed to getting before the jury, again for purposes of prejudice, the tremendous size of District 50. It isn't framed to show agency. You can find out by asking questions limited to construction workers or to Laburnum Construction Company.

So we say that this question is subject to all objections that Mr. Mullen read this morning. Why do we have to go back and dig up a list and see every industry in every one of the 26 states? That isn't going to throw any light on what happened over in Kentucky. It has nothing to do with what happened over in Kentucky.

Mr. Robertson: If your Honor please, I never heard such argument. You mean suppose this defendant operates na-

tionwide. It is a defendant. Haven't we got a right to show it, in addition to everything else I have said, and if the United

Mine Workers has this dummy subordinate page 84 } through whom it acts nationwide, including out here in Kentucky, haven't I got a right to show it? If in addition to Breathitt County, Kentucky, they are using this instrumentality throughout the United States, do you mean it is irrelevant to show that?

Mr. Mullen: I can't see how these industries that come under District 50 can possibly throw any light on the question of liability down there. This particular industry, Construction Workers, is what they are concerned with, and what they can ask, if Construction Workers has been designated as an industry in which the District 50 could have local unions. That is all they are concerned with. If it tends to show agency, which I think it does not, to use that instance where they are concerned is just as potent as to use a hundred other industries that has no bearing on it whatsoever.

Mr. Robertson: I just can't follow that argument. If I could show United Mine Workers acting through this instrumentality is furthering its purposes all through America, and that it was acting through this instrumentality on our job—the fact that it is not only on our job, but in all of these other industries is not evidence tending to prove our case that they did here just what they did in other instances? It is what the case is on.

Mr. Mullen: What more are you concerned with in this particular in reference to this defendant than is page 85 } stated in the Constitution of these defendants, namely that District 50 is created as a District of this defendant and subject to the international laws? What more do you want?

Mr. Robertson: You have asked the question, I will answer it. I think it is additional proof. Suppose somebody claims I am general attorney for Virginia Transit Company, and say, "Well, how do you prove that?" I say, "I tried that one case for them", and they would say, "Well, that doesn't make you general attorney." During that same 12 months, I tried cases all over Virginia and North Carolina. What about that? Do you think that is not an element? It is the same proposition here.

Mr. Pollard: Excuses me, applying Mr. Robertson's argument to this case, he said he tried that one case. Does that make him general attorney? Well, if we are agent in this one case out in Kentucky, the rest of it is material anyway. That is the only thing you are concerned with.

Mr. Robertson: We are to get in the running with all of

them here, I see. I say when you assert that I am general agent and I don't know but one case, that I have ever tried, that doesn't make me a general attorney necessarily. If it is up before a jury, I am certainly entitled to show whoever tried to prove me general attorney, that during the same time involved in this thing, I tried things for the same page 86 } company all over Virginia and North Carolina.

We say here you were agent of United Mine Workers. You were acting as their agents, furthering their business. You not only did this, but as further proof of that, that is what you do as practice and course of action all through the United States.

Col. Harris: We are not being tried for anything that happened with reference to other people in the United States. It is a question of whether we did any legal wrong to this plaintiff for which this plaintiff is entitled to recover. If we would list 1,500 different industries, there couldn't be any possible effect except to lead somebody on the jury to say, "Well, this Union is too big".

Mr. Robertson: We have got the right to say that, if we want to.

The Court: Let him finish.

Mr. Robertson: I have got the right sometime to make the closing argument.

The Court: We will let you close after we hear from this gentleman. Go ahead and finish.

Col. Harris: That is all. I think it is purely a question for prejudice and would be an unreasonable burden on us.

Mr. Robertson: Of course, he is arguing what I am asking is substantive law. I am not. I am asking for page 87 } method of proof, circumstantial evidence.

The Court: Well, as presently advised, I will allow the question to be answered.

Col. Harris: We reserve an exception.

The Court: Very well.

Mr. Robertson: 13 (d). I am going to ask that you read all of that.

Mr. Mullen: 13 (d).

Mr. Robertson: I want to read all of that.

Mr. Mullen: "13. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that, among other objects, it was an object of United Mine Workers of America to do the following:

"Second. To increase the wages, and improve the con-

ditions of employment of our members by legislation, conciliation, joint agreements or strikes,'

"and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?"

That is the question they have repeated fifty-two times.

Mr. Robertson: You didn't object to it.

Mr. Mullen: I objected to it as a whole.

The Court: Let's move along.

page 88 } Mr. Mullen: "(b) Was the above quoted object of United Mine Workers of America also an object of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and if so, during what period or periods?"

"(c) Was the above quoted object of United Mine Workers of America also an object of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and, if so, during what period or periods?"

"(d) As used in the language quoted above, what is meant by the words 'joint agreements'? Were United Mine Workers of America, or District 50, or United Construction Workers parties to or bound by the provisions of any such joint agreement during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? If so, furnish a copy of all such joint agreements."

Now, your Honor, please, I have already explained what those joint agreements are. There are over 1,500 of them. They are not joint agreements between District 50 and United Construction Workers, between the Mine Workers of America and United Construction Workers, or Mine Workers of America and District 50. They are the collective bargaining agreements entered into with a party employing  
page 89 } labor, by that party and the Union representing those laborers. It is put into this Constitution to emphasize what the administration of the United Mine Workers stands for, namely, a contract made shall not be violated. So in all truth they have provided that the local unions cannot make any rules and regulations in violation of joint agreements. That has nothing to do with this case. It will disclose the private business of employers in more than 1,500 cases and would not show anything as to the joint connections of any of these three defendants.

Mr. Robertson: Judge, let me tell you what we are driving at there. First, because you can work for hours on here, you can't find what you are talking about. Any such interpretation as Mr. Mullen says, I have not been able to find it. Suppose you are trying to work out a collective bargaining agreement. Suppose the United Construction Workers was dealing with the employer, District 50 sits in on that thing and aids and abets and advances the purpose in conjunction with them, and United Mine Workers sends its representative there and they all agree on a joint agreement for these three defendants to work together. They all aid each other in accomplishing a collective bargaining agreement. Then we are entitled to know it and we are entitled to those agreements. And it is no excuse, it is either relevant or it is not relevant.

Of course, you don't want to make anybody do un-  
page 90 } necessary work, but if it is relevant and necessary  
and proper for the proof of this case, because it  
entails work they don't like to do is no reason to rule it out.

Mr. Cowherd: May I understand? Does the Court understand just exactly what we mean by 'joint agreements'?

The Court: No, I don't.

Mr. Cowherd: It is nothing in the world but what is meant by a union contract. It isn't good practice for gentlemen to reveal their contracts with one employer and another.

The Court: I want to ask, that is a contract between the Union and employer?

Mr. Cowherd: There are over 3,000, rather than 1,500, because you have got two years inquired about here. We don't object, if we have any joint agreements between this plaintiff and either of the defendants. We haven't heard of one, but we don't think this plaintiff has any right whatever to view a joint agreement which might be from his competitor, or that this Court should require us to put in the record here joint agreements which may reveal agreements between their competitors as employers. That is what joint agreements are.

Mr. Robertson: It takes all of this talk to find out—I am saying this: He is willing to give us anything except what we want that throws a light on it. We haven't  
page 91 } asked what the joint agreements are between these  
three defendants. We say here if any one of these  
three defendants made joint agreements with an employer,  
the other two were parties to that agreement in the sense of  
helping put it through, we are entitled to know what the inter-  
relationship is.

The Court: I fail to see the relevance there. I refuse that question.

Mr. Robertson: Does the Court require them to answer what a joint agreement is?

Col. Harris: We do that later.

Mr. Robertson: I am asking about this question now.

The Court: I will allow them to answer what a joint agreement is. Mr. Cowherd has just made the statement.

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page 93 }

. . . . .

Mr. Mullen: We are at Question 19.

"19. Who were the members of the International Executive Board of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and who have been the members of said International Executive Board since August 4, 1949; when and by whom was each of these persons appointed or elected a member of said International Executive Board; during what period or periods between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949, did each serve as a member of said International Executive Board; what Districts or Sub-Districts or branches or subordinate branches of United Mine Workers of America did they respectively represent on said International Executive Board; and what were the locations of their respective offices?"

We object to that question because it is immaterial to the issue in this cause. Any inquiry should be limited to Region 58 of United Construction Workers or District 50. Coal is mined in 26 states. Members of the Board exceed 26 in number. This question would require information to be gotten from all Districts where they are elected. In addition, this is just a general fishing expedition. We cannot

page 94 } see what the members of the International Executive Board, other than any representing this Region 58, which is the region within which this is said to occur, in which the men they are inquiring about particularly were working, were employed by whomever they were employed by—and we think that should be limited. We think that is in line with the ruling which your Honor made when we discussed the interrogatories addressed to United Construction Workers.



Mr. Robertson: Your Honor, please, our position on that is this: That we are entitled to know who was on that Committee. For instance, Tom Raney, the International Committeeman from Breathitt County, Kentucky; we think we can pin things on him, but I think I am justified in the statement, also some of the members of the Executive Committee were also members of the organizing committee of District 50, I believe members of the organizing committee of the United Construction Workers.

There is no burden on them to take this publication which appears every two weeks. It has got the names on there. It has been run down in one column. These committeemen, you know, they draw \$1,000 a month through their very stable jobs. They don't change very often. We are entitled to know what the interrelationship is between that Executive Committee, this International Executive Board, and these organizing committees of District 50 and United Construction Workers. It is perfectly relevant to show who put them there, whether they were elected or whether they were put in  
 page 95 } there by this Lewis authority, how long they stayed, who they were, so when we get an orderly development of our proof, we think we are going to show they were just all mixed up together, interwoven together, just the same old crowd.

Mr. Mullen: With regard to Thomas Raney, they ask further on specifically if he was a member of the International Executive Board, which question we did not object to. But the other members of the Board, in other Districts—there is one for each District, elected by the District, and as to the facts of their election, being a member on the Board, what that has to do with this matter we cannot see.

Mr. Robertson: Even in corporate law, suppose they are one, two, three, four, five members of the International Executive Board, who were also on the organizing committee of District 50 and held various jobs in District 50, or in United Construction Workers? That is all evidence and proof of agency and interrelationship, component parts. That is our whole case.

Mr. Cowherd: If the Court please, on Interrogatory No. 20, immediately following—

Mr. Robertson: I am talking about No. 19.

Mr. Cowherd: I was about to say in Interrogatory No. 20, the exact question is asked and we are raising no objection. It says, "Who represented District 50 on the International Executive Board of United Mine Workers of  
 page 95a } America between", and it is those same dates. You can get that information in No. 20.



Mr. Robertson: All right. I have got the thing here to show you didn't have any on the specific date. I am entitled to show the whole picture, to establish the interrelationship.

Mr. Cowherd: Question 29 doesn't ask that at all.

Mr. Mullen: It also asks later on in here who were the members of the organizing committee, District 50 and of United Construction Workers. Thomas Raney was then on the Executive Board. It will be shown.

Mr. Robertson: I think I have the right to close, if we are going to close. I will say that is the very reason why I am entitled to know. If I come along later, they are going to try to knock it out, and anyway I can smoke it out, to show what the hook up is between all three of the defendants, I am entitled to know.

The Court: If these questions relate to others, as they come along—it may have some bearing.

Mr. Cowherd: This asks for the Executive Board member and has nothing to do with Region 58, and the area of Breathitt County, Kentucky, no connection whatever.

Mr. Robertson: If I am going to exercise my right—

The Court: Let him finish.

Mr. Cowherd: They have 30 regions scattered page 96 } geographically all over the United States, Canada, to the Gulf, and in Canada. That many.

Mr. Robertson: We are entitled to know how they are hooked up among each other.

The Court: As I understand it, the International Executive Board is the top Board.

Mr. Mullen: Composed of a Board of Directors and the corporation, and are elected by the Districts of the United Mine Workers.

The Court: The Court will allow that question to be answered.

Mr. Mullen: We note an exception.

The Court: An exception will be noted.

. . . . .

page 97 } Mr. Mullen: The next one is No. 24 (f).

Mr. Robertson: Read the whole thing.

Mr. Mullen: "24. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things as follows:

"In all questions of dispute, appeals and grievances (unless restricted by joint agreement) the right of appeal of an

individual member shall end with the District Executive Board, and the right of appeal of any branch of the Organization shall end with the International Executive Board. This shall not prevent individuals whose membership is at stake from appealing to the International Executive Board, which body's decision shall be final and binding until reversed by the International Convention,' and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) As used in the language quoted above, do the words 'any branch of the Organization' mean any branch of United Mine Workers of America, including District 50 and United Construction Workers, and, if not, what do they mean?

"(c) Did the members of District 50, whose membership might be at stake, have the right, at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, to appeal to the International Executive Board, all as provided in the language quoted above, and, if so, during what period or periods?

"(d) Did the members of United Construction Workers, whose membership might be at stake, have the right, at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, to appeal to the International Executive Board, all as provided in the language quoted above, and, if so, during what period or periods?

"(e) As used in the language quoted above, do the words 'International Executive Board' mean International Executive Board of United Mine Workers of America, and, if not, what do they mean?

"(f) As used in the language quoted above, what is meant by the words 'joint agreement'? Were United Mine Workers of America or District 50, or United Construction Workers parties to or bound by the provisions of any such joint agreement during the period between the dated October 28, 1948, and August 4, 1949, and also after August 4, 1949? If so, furnish a copy of all such joint agreements."

That is repetition of a question gone before, in which Your Honor has ruled we do not have to furnish those agreements.

Mr. Robertson: Are you through?

page 99 } Mr. Mullen: Yes.

Mr. Robertson: Your Honor, please, it just shows the context of that language quoted up there out of the Constitution, shows you how impossible it is to nail down the meaning of the language used.

Now, Mr. Mullen has stated here with reference to a prior question, that they referred to a joint agreement between an employer and an individual union. And, therefore, we had no right to pry into the business of that.

This thing is bound to be joint agreements between different unions. That is what we are trying to smoke out; between the United Construction Workers, United Mine Workers, District 50, and the United Mine Workers of America.

"As using the language quoted above, what is meant by the words 'joint agreement'?" If it means what we think it means, from a study of these papers, of these Constitutions and Rules, which we can't understand, it is used in a different sense here than the sense it was used in, in that other question, "Were United Mine Workers of America, or District 50, or United Construction Workers parties to or bound by the provisions of any such joint agreement" between each other during that period?

In other words, if they were all hooked up, they are interwoven and inter-related, and we have got a right to know about it. We have got a right to know how many times it was—

page 100 } Mr. Mullen: Not so much as a comma has been changed in that from the question in 13 (d), which Your Honor rules, we understand, against.

The Court: Do the words "joint agreement" mean the same thing as where I ruled a few moments ago?

Mr. Robertson: We say not.

Mr. Mullen: It means the same everywhere it is used in the Constitution.

Mr. Robertson: If they will say that, if they will make that statement, that is all right, all through there, then it is perfectly easy for them to answer it, and say there were no such joint agreements between us.

Col. Harris: We can't let him frame our answers.

Mr. Robertson: You can't frame your answers except under the ruling of the Court either.

Mr. Mullen: Your Honor, please, we agreed to state what the joint agreements were at the former time you ruled.

The Court: The Court refuses to require (f) to be answered, 24 (f).

Mr. Robertson: The Plaintiff will except to refusal of the Court to require the Defendants to answer Interrogatory 24 (f) as tendered, upon the grounds advanced in argument in support of this Interrogatory (f).

Mr. Mullen: Next is No. 27 (f).

Is it necessary to read all that? It is identical page 101 } the same question you just passed on.

Mr. Robertson: I think I have the right to have the thing gone into conscientiously.

The Court: Well, I expect you had better read it then, if it is requested by either party.

Mr. Mullen: "27. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'Sub-Districts may be formed and assigned such numbers and territory as may be designated by the District of which they are a part, subject to the approval of the International Executive Board; and such Sub-Districts may, after being duly chartered, adopt such laws for their government as do not conflict with the laws and rulings of the International or District Unions or joint agreements',

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) Was United Construction Workers formed as a Sub-District of a District of United Mine Workers of America, and, if so, by what District was it formed and of what District did it become a part? What territory was assigned to United Construction Workers?

"(c) When was the formation of United Construction Workers approved by said International Executive Board? Furnish a copy of such approval.

"(d) As used in the language quoted above, do the words 'International Executive Board' mean the International Executive Board of United Mine Workers of America, and, if not, what do they mean?

"(e) As used in the language quoted above, do the words 'laws and rulings of the International or District Unions' mean the laws and rulings of the United Mine Workers of America or of the District Unions of United Mine Workers of America, and, if not, what do they mean?"

Here is the question we object to.

"(f) As used in the language quoted above, what is meant by the words 'joint agreements'? Were United Mine Workers of America, or District 50, or United Construction Work-

ers parties to or bound by the provisions of any such joint agreements during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? If so, furnish a copy of all such joint agreements."

Same question without a change of a coma.

Mr. Robertson: Here is what I am trying to drive at. I think the context indicates that the term "joint agreements" was being used in one sense back in the question you ruled on before lunch, and being used in a different sense page 103 } now. I think what they mean here is joint agreements between these component unions or parts of unions or different defendants. You remember before lunch I said, I argued, but the Court rejected my argument, if you were the employer, I come along as the United Construction Workers, try to negotiate a contract and couldn't put it over. I then pull in District 50 to help me, they participate in it, we still can't put it over. Then I pull the United Mine Workers in it to help me, and there you have us all together succeeding in putting it over. I think I would be justified in showing that.

I understood, my recollection is, Mr. Mullen said before lunch there was no such instances of that sort existing. It would be a union making a contract with an employer. No other union or defendant involved in it. If that is correct, I don't think I had a right to ask for it.

Now here, if instead of being a contract between a union and an employer, it is a contract, for instance, between United Construction Workers and District 50, and United Mine Workers or any two of them, I think I am entitled to it.

Col. Harris: We state again that joint agreements do not refer to the agreements that he has in mind. They are employee or employer agreements.

The Court: All right. The Court will refuse to require that question to be answered.

Mr. Robertson: He can answer the first part page 104 } of it, nail that down, Your Honor, that is what you ruled this morning. Go back there to No. 24 (f), ask him to answer the first part of that, that will avoid misunderstanding hereafter.

The Court: In other words, "As used in the language quoted above, what is meant by the words 'joint agreement'?"

Mr. Robertson: Yes.

The Court: The Court will allow that to be answered.

Col. Harris: We can just refer to the previous answer we have made.

The Court: And in 27 (f), answering the first question, that would be the same.

Mr. Mullen: Our next objection is No. 28(e), which brings up the same question.

Mr. Robertson: If you make the same objection, answer it the same way, I think the Court will make the same ruling.

The Court: Same ruling. That was 28(e)?

Mr. Mullen: 28 (e).

The next one is No. 34 (c). Do you want all that read?

Col. Harris: If you are tired and want me to read it, I will?

Mr Mullen: I am going to ask one of you all to read it right now.

Col. Harris: I will be glad to read it.

Mr. Mullen: Go ahead.

page 105 } Col. Harris: "34. With respect to the privileges, powers and duties of the President of United Mine Workers of America, did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and October 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the Organization. Said statistician shall make a report to the regular convention',

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) As used in the language quoted above, do the words 'the Organization' mean United Mine Workers of America and its Districts, Sub-Districts, branches and subordinate branches, including District 50 and United Construction Workers? If not, what do those words mean?

"(c) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did any person or member, having been appointed for the purpose by the President of United Mine Workers of America, collect and compile or attempt to collect and compile statistics relating to District 50 and United Construction Workers or to the work and industries claimed by them, respectively? If so, what statistics were collected and compiled and what reports thereon were fur-

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nished to the President of United Mine Workers of America? Furnish a copy of all these reports." You have an objection there?

Mr. Mullen: Yes.

Mr. Robertson: I can simplify that somewhat.

The Court: All right.

Mr. Robertson: I think that is too broad, Your Honor. What we are driving at there is—come back here to the language of the Constitution on page 17.

" 'He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the Organization.' "

That just throws it all wide open. We want to know what the scope of his duties were there? What he did? Otherwise, these statistics, we want to show the inter-relationship between them and statistics so far as they apply there would show the inter-relationship. We don't care about those statistics all over the United States.

Col. Harris: Judge, hasn't he misread the question? Don't the words "and any other matter" relate to statistics?

Mr. Robertson: Not necessarily.

page 107 } Col. Harris: They do to me.

Mr. Robertson: If you will make that statement in the record, that is entirely satisfactory to me.

The Court: Let's see! "He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the Organization."

Mr. Mullen: Statistics on them.

Mr. Robertson: What we are trying to get there, if they had had anybody compiling statistics on District 50 of United Construction Workers, or Region 58, we are entitled to know it.

Mr. Mullen: United Construction Workers have 675 locals, 45,000 members, 58 regions. District 50 has 850 locals, 112,643 members, and 58 regions. We think that question of information should be confined to Region 58, which is the region involved in this matter. We don't think that to go all the way in hundreds of locals—

The Court: What is the objection to confining it to Region 58?



Mr. Robertson: I think that would give us substantially what we want.

The Court: All right. Confine it to Region 58.

Mr. Pollard: District 58, United Construction Workers.

The Court: Region 58 of District 50 of United page 108 } Construction Workers.

Mr. Mullen: Region 58, of District 50 and of United Construction Workers.

The Court: What is the next?

Mr. Mullen: The next one is 35 (c).

Col. Harris: I will read it. Would you like to have me read it all?

Mr. Robertson: Yes.

Col. Harris: "35. With respect to the privileges, powers and duties of the President of United Mine Workers of America, did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'He may appoint such organizers field and office workers as may in his judgment be necessary to conduct the affairs of the International Union',

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) As used in the language quoted above, do the words 'International Union' mean United Mine Workers of America and its Districts, Sub-Districts, branches and subordinate branches, including District 50 and United Construction Workers. If not, what do those words mean?

"(c) What organizers, field and office workers did the President of United Mine Workers of America appoint or cause to be appointed to conduct or to assist in conducting the affairs of District 50 and United Construction Workers, or either of them, during the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949?"

Mr. Mullen: We object to that on the grounds it is not material to the issues in this cause, and covers too much ground.

We do not object to giving this information for Region 58, or District 50, United Construction Workers, but United Construction Workers has 675 Locals, 58 Regions, District 50 has 850 Locals, 58 Regions. This question would cause to deter-

mine every stenographer, office boy, or anybody else appointed in any of those Regions all over the United States and Canada.

If they want the information that they appointed anybody in the Region 58, and thereby that shows agency, all right. We will furnish that information. We don't think we are called on to go all over the United States and Canada.

Mr. Robertson: Judge, here is why we think that question is correct as propounded.

Suppose that they did at times appoint anybody within Region 58, but suppose they were employing them page 110 } everywhere else in America, then it was their general agent even though they didn't specially appoint one in this territorial subdivision, if Tom Raney was their man acting there, he was their agent there, and they would still be liable for his acts.

So, even though they may not have appointed anybody within Region 58, if they had been appointing them all over the country, it would show that the United Mine Workers was dominating and controlling District 50, had the right to do it. It would be a question of whether or not they exercised that right.

The Court: Why don't you confine it to Region 58, and any others appointed outside who performed any duties in Region 58 during that period?

Mr. Robertson: I don't think that would meet it. Suppose that the United Mine Workers appointed everywhere in America except in Region 58, they would still be their general agent. We would still show the inter-relationship between the United Mine Workers and District 50, which dominated and controlled them, if our theory of the law is right. Therefore, United Mine Workers would be liable for its illegal acts.

Mr. Mullen: That remains to be seen. Does Your Honor realize the immense amount of work in an organization of this size that this would call for, the whole United States and Canada?

Of course, in carrying on the work, there are page 111 } changes in employees from time to time. This goes down to as low as office boys. I don't think that it has any material bearing. If they want to show an agency, claims that that shows an agency, if it could so be said, they have the answer right there when it states in the Constitution: "He may appoint such organizers, field and office workers as may in his judgment be necessary to conduct the affairs of the International Union."

Mr. Robertson: Of course, here is what they are driving at. If the independent organizations, if District 50 is not dominated by United Mine Workers, there wouldn't be any-

thing there. It would be just a little trivial thing. If they are reaching down in their appointing of office boys, scullery maids, everybody else, that is proof-positive of what we are saying, that they are dominating the whole concern. And we are entitled to know it.

Col. Harris: Is it permitted for me to say something? I don't want to violate your rules.

The Court: I have an open mind on this. The Court wants all the enlightenment it can get.

Col. Harris: Well, I—

Mr. Robertson: I hadn't finished.

Col. Harris: Pardon me.

Mr. Robertson: I had another thought to add, it just came to me.

The Court: If it comes to your mind, all right.

Col. Harris: I was struck with the fact, Your page 112 } Honor used exactly the words that were running through my mind, that was this: If any men were appointed in Region 58, or if they were appointed for some other region and went down and worked in Region 58, that would not impose an unreasonable burden on us. It would give him the information that is relevant and pertinent.

Now, then, he keeps talking about showing the connection between the unions. There isn't any doubt from the Constitution that the parent organization is the International Union of United Mine Workers of America. That appears from the Constitution. Nobody could keep it from being the parent organization. So any question of trying to show a relationship seems to me beside the point.

Mr. Robertson: Judge, here is my point: That had escaped my mind. As has been said, there is the parent organization. There is the authority, if you choose to exercise it.

Now, this Coronada Case in the Supreme Court of the United States, which has been cited in this case, goes a long way in saying, which of course is correct, you have not only got to show the existence of authority, you have got to show it was exercised. Which, of course, is just a garden variety of the law of agency. We don't think the Coronada case applies here, or has got anything to do with this case at all.

This is not under Federal Statute, not under Federal laws. It is under the law of Kentucky. The Law of Kentucky is not the law of the Coronada case, which is surely page 113 } a Federal Statute. We are going to apply the garden variety of laws of agency of Kentucky, which I think is about the same as Virginia in this phase of it.

After you show the existence of an agency, you have got to

show action. That is what we are trying to show. That is exactly what we don't want to show, because it takes us off on the Coronada Case, and that is exactly what we want, if they are putting in here office boys, stenographers, every Tom, Dick and Harry, we are entitled to know it.

Mr. Mullen: It won't help you under the Coronada Case.

Mr. Robertson: We don't think that case applies here. We say, in other words, to prove our case, we have got to show the existence of the relationship of an agency. We have got to show the act of the agency was actually performed. Here it is. It goes right to the heart of the case.

The Court: In assuming, if none of these employees were in Region 50, how would that tie in in this particular case?

Mr. Robertson: It would show the general agency. It would, I suppose, show a general control of District 50 by the United Mine Workers. Then, suppose I can show that somebody connected with District 50 did these unlawful acts within the scope of his authority, which would render them liable under the law of Kentucky, then I have got them.

page 114 } I have got a right to show the existence of the relationship of an agency and the exercise of the act of agency generally as supporting my claim that Tom Raney was acting as an agent in the acts that are attributed to him in this action.

The Court: May I ask this question?

Reference has been made to Mr. Raney. Did he come down into Region 50?

Mr. Robertson: Yes.

The Court: Wouldn't that be covered in the question I suggested? Those employees in Region 50 appointed in Region 50, those employees appointed outside of Region 50, who have been in Region 50.

Col. Harris: Region 58.

The Court: Region 58.

Mr. Cowherd: Mr. Tom Raney is the International Executive Board member for an area larger than Region 58, but part of Region 58, that part in which Breathitt County is situated, is in that same geographical area. He is there all the time. That is his station.

Mr. Robertson: We are not suing on Region 58, we are suing District 50, whatever Region 50 is. I don't know how important Region 58 is, I have some idea how important District 50 is.

Mr. Mullen: I think Mr. Robertson's argument contradicts itself. He says after showing agency there, they  
page 115 } must show specific acts done under that agency.  
Now, showing general agency in other districts

isn't necessary, if he shows an agency in this District. He still hasn't gotten anywhere, unless he shows that under that agency wrongful acts were committed by employees of one or more of these organizations.

Mr. Robertson: Suppose he is a general agent of District 50, and I show that—I am using him as an illustration—he and us are agents of District 50, generally elsewhere in the United States. Then they come within Region 58, within the general scope of that authority, and in furtherance of the objectives of District 50, and of the United Mine Workers, do unlawful acts, then under the laws of Kentucky, they are liable without any prior authorization, or subsequent ratification.

The Court: What does District 50 comprise?

Mr. Robertson: That is what we are trying to find out.

Mr. Mullen: United States and Canada.

Mr. Cowherd: There are 58 different regions geographically located.

The Court: District 50 is comprised of the United States and Canada.

Mr. Cowherd: Whatever occurred in this case occurred wholly within Region 58 or District 50, one of the page 116 } 58 regions.

Mr. Robertson: We started out this morning, as I understood the claim, it was an independent union. Now it turns out they have already gotten far enough in here that it runs right square back to John L. Lewis. He runs the whole thing, the Executive Board, the top people. They object now, because we say he comes down and dictates to the office boys and the stenographers. If that is the fact, we are entitled to know it.

Mr. Mullen: We said this morning that District 50 is a district of the United Mine Workers. It runs its own affairs.

The Court: As presently advised, the Court will restrict this question to Region 58, and all employees appointed outside of Region 58, who have been doing business in the confines of Region 58, regardless of where they were appointed.

All right. 37 (c) and (d).

Col. Harris: All employees appointed outside of 58—

Mr. Cowherd: This might seem foolish. It really isn't. Would it apply to the lawyers they have sent down there who have made investigations on this case?

The Court: The Court wouldn't be interested in attorneys.

Mr. Robertson: I don't care anything about the lawyers.

The Court: The attorneys are excluded.

Mr. Robertson: I don't know. Suppose John page 117 } L. Lewis appointed them. I think—Suppose John L. Lewis employed Mr. Cowherd—I think that would be the most flagrant interference, most flagrant control.

Suppose John L. Lewis appointed Mr. Mullen or Mr. Pollard, is that evidence?

Mr. Pollard: I suggest it is not evidence. We are employed to defend this case, regardless of any agency.

Mr. Robertson: That is all right. I want to show the control. I ask they show that. If they didn't employ him, they don't have to state it. If they did, we are entitled to know it.

Mr. Mullen: We object to that. I don't think they have the right to bring lawyers into this matter.

The Court: Well, lawyers will be excluded in this.

Col. Harris: What is the next one?

Mr. Mullen: No. 37 (c) and (d).

Col. Harris: "37. With respect to the privileges, powers, and duties of the President of United Mine Workers of America, did the Constitution of United Mine Workers of America, at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things, as follows:

" 'He shall interpret the meaning of the International Constitution but his interpretation shall be subject to page 118 } repeal by the International Executive Board',

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) As used in the language quoted above, do the words 'International Constitution' mean the International Constitution of United Mine Workers of America, and, if not, what do those words mean?

"(c) What interpretations of the meaning of said 'International Constitution' made by the President of United Mine Workers of America were in effect between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all these interpretations,"

Is it "C" you are objecting to?

Mr. Mullen: "C" and "D".

Col. Harris: "(d) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did the President of United Mine Workers of America



have the right to interpret or to cause to be interpreted the meaning of the Constitutions or Rules of District 50 and of United Construction Workers? If so, what interpretations of the meaning of said Constitutions or Rules made by the President of United Mine Workers of America were in effect between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all page 119 } these interpretations."

Will you state the objections, Mr. Mullen?

Mr. Robertson: One minute! I think we can simplify that in line with the prior ruling of the Court, the interpretations made on and after October 28, 1948, down to date.

Mr. Mullen: If that is so, then with reference to this matter or in reference to Region 58, yes. But during these two years, the United Mine Workers have been doing business all over the United States and Canada. There were undoubtedly letters written by the President for various mining regions, asking, "Under the Constitution, can we do so and so?" or, "Under the Constitution, what is to be done about the rates, tonnage of this district?" That has no bearing on this case. It simply is almost an impossible task. It means taking the entire office practically of United Mine Workers for those two years and bringing it down to Richmond.

Mr. Cowherd: If the Court pleases, in trying to arrive at some means of answering these, before objections were even contemplated, we began to make our "road map." We found out to get that particular information, we would have to search the independent file of each of the thousands of local unions to get those things, because it isn't kept in a compiled form, and there isn't that much formality in connection with one out of a hundred inquiries.

Mr. Robertson: Now, if Your Honor please, to page 120 } come back to these basic things, which you can see, is the heart of our case all the way through here, to show the inter-relationship between these different defendants and the relationship either as component parts of one organization, or as principal and agent. Now, they don't have to count them all. Suppose they say they have done that generally all through the United States. That would cover the answer.

Another thing we are up against. I have read enough of these cases to know it. What we have a right to be protected against is when we go to the trial and come out and rely on one of these things (indicating the Constitution), then you see Mr. John L. Lewis has the right to interpret any way he wants, and nullify the whole thing, subject to veto by the In-



ternational Executive Board. We want to be protected against that.

So, it has gone a double objective; one, is to protect us against what I have just stated; two, they have been doing it all over the United States. I am not interested in this local, that local, and the other. If it has been their practice and custom throughout the United States, this Plaintiff is entitled to know it.

Mr. Cowherd: If the Court please, that isn't what I said.

Mr. Robertson: I hadn't finished. I come to (d).

The Court: Suppose we stick on (c) first, and page 121 } confine our remarks to "C".

Mr. Cowherd: We don't know whether there has been an interpretation or not, and to find out if there has been, irrespective of the subject to which it refers, we would have to go through and search the files, thousands in number, and it can't be done under six months, to find out whether or not there has been an interpretation.

When we use the words, "were in effect", we would have to recheck and double-check, if there has been a contra inquiry, to see whether that was changed, to be sure the Constitution does not grant to the President, a reading of it will show any right to change the Constitution, or to amend it. That is granted only to the Convention, which doesn't happen until 1952. And there is no such thing as anybody having a right to change the wording of the Constitution; only to interpret its application to a particular incident that may occur somewhere.

Mr. Robertson: Let me just tell you that does not make sense. I haven't said anything about rewriting the Constitution. I have said, "Does this gentleman mean to say that the top man of this organization, whether it is John L. Lewis or Tom Jones, don't care who it is, doesn't know whether he has been interpreting these things as constant practice around throughout the United States without searching the files?"

I might as well ask Your Honor if you had tried page 122 } cases, the general character of the business of

Your Court is such, you don't have to run back to the files to tell what's what.

The Court: Let me read this again.

Col. Harris: He asks for copies.

The Court: It asks to furnish a copy of all these interpretations, to do so, you would have to go to the files to get those.

Mr. Robertson: I am willing to waive that. I want to know what the general practice is. I am willing to eliminate that.

The Court: In other words, you want to know whether

general practice is for the President to interpret these—The International Constitution.

Mr. Robertson: Yes.

Mr. Mullen: Is it the general practice of the President to interpret the International Constitution?

Mr. Robertson: What, in general, is done?

The Court: The general answer whether he interprets the International Constitution.

Mr. Cowherd: The Constitution so states, yes.

Mr. Robertson: It gives him the power. You want to know whether he has been doing it?

The Court: That is what he has been doing.

Col. Harris: I think he is entitled to ask  
page 123 } whether he has performed a function under that.

I think as limited that way, my own personal opinion, these other lawyers may disagree with me, as limited that way, has he made interpretations, yes. But, to go through all our files—

The Court: That is what you want to know.

Mr. Robertson: As I have understood it, what is the interpretation, if he can state it, in general. If he gives a general, honest, forthright answer, I am satisfied. I don't want to ask him to dig out each letter.

The Court: Answer that question to the best of your ability along those lines. All right? No copies are to be furnished.

Now we go to "D".

Col. Harris: "(d)—

Mr. Mullen: That is the same thing.

Col. Harris: No, that is slightly different.

"(d) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did the President of United Mine Workers of America have the right to interpret or to cause to be interpreted the meaning of the Constitutions or Rules of District 50 and of United Construction Workers? If so, what interpretations of the meaning of said Constitutions or Rules made by the President of United Mine Workers of America were in effect between the dates

October 28, 1948, and August 4, 1949, and also  
page 124 } after August 4, 1949? Furnish a copy of all these interpretations."

The same argument that we have made—

Mr. Robertson: I think that if furnishing copies were to come out, then you would answer it like you did the other one.

The Court: I think the same would apply to "D".

Col. Harris: Will Your Honor indulge us just a second, so I can catch up here on that?

The Court: Certainly.

Col. Harris: 37 (d), the same ruling?

The Court: Yes.

Col. Harris: As in 37 (c)?

The Court: Yes.

Mr. Mullen: The next is 40 (b).

Col. Harris: "40. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

" 'All appointments, suspensions and removals from office done by the President shall be subject to the approval of the International Executive Board',

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

page 125 } "(b) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, what appointments, suspensions and removals done by the President of United Mine Workers of America were approved by the International Executive Board, and what appointments, suspensions and removals done by the President of United Mine Workers of America were disapproved by the International Executive Board?"

You have an objection.

Mr. Mullen: The question is objected to on the grounds—

Mr. Robertson: I may be able to save some time. If you say you approve 95, and disapprove 5, that is all I want. I am not asking to say, approve them all, or disapprove them all. There couldn't have been a terrific volume.

The Court: Does that satisfy you? In other words, if 95 were approved, and 5 were disapproved, without giving names. It seems to me you could do that without any trouble.

Col. Harris: All right. That is, giving percentages, giving numbers.

The Court: The number approved, the number disapproved.

Mr. Cowherd: No names.

The Court: Now go to 43.

Mr. Mullen: 43 (b).

Col. Harris: "43. With respect to the Inter-  
page 126 } national Executive Board of United Mine Work-  
ers of America, did the Constitution of United  
Mine Workers of America at any time between the dates Oc-  
tober 28, 1948, and August 4, 1949, and also after August 4,  
1949, provide, among other things, as follows:

" 'The Board shall be convened upon the order of the Presi-  
dent, or by the Secretary-Treasurer at the request of a ma-  
jority of the members thereof',

and, if so, state the following:

" (a) During what period or periods did said Constitution  
so provide?

" (b) During the period between the dates October 28, 1948,  
and August 4, 1949, and also after August 4, 1949, what meet-  
ings of the International Executive Board of United Mine  
Workers of America were held? When and by whose order  
was each meeting convened and when did each meeting ad-  
journ?"

Mr. Mullen: Your Honor, we object to that on the grounds  
that it is clearly immaterial. It does not come under Mr.  
Robertson's stock answer that it shows agency.

Of course the International Executive Board, which is the  
Board of Directors, from time to time called a meeting. But  
that fact, when they held meetings, when they adjourned,  
certainly cannot have any bearing on this case.

Mr. Robertson: Now, if Your Honor please,  
page 127 } Mr. Mullen here has referred to what everybody  
reads in the newspapers and knows; well, if I may  
fall back on that, it is certainly common newspaper reading  
that John L. Lewis dominates the whole show, and the Inter-  
national Executive Board is a dummy board he completely  
controls, that he hires and fires, and exercises the powers  
of an industrial czar.

Now, we are claiming that this thing starts at, and the  
United Construction Workers goes up through District 50,  
goes on up, on through to the top. We are showing all that.  
We think before we get through with this case, we are going  
to show he reaches all the way down; whatever he wants to  
do, he does it. That being so, throwing light on that situa-  
tion, we think we are entitled to have those questions.

The Court: Let me read this again.

Col. Harris: I might state for the record we don't deny

that Mr. Lewis is President of the union and we think he is a good one. But he is no such superman, as that, that he can reach on down and touch every transaction of 600,000 members. That would require omnipotence, rather than enlarged human powers.

Mr. Robertson: That is what we are going to find out. I think he is, and we shall be enlightened about the deity. From what we read about him, that committee rarely functions without him. I didn't mean to use an offensive term.

The Court: I don't know that the Court is interested in that line of argument.

page 128 } Col. Harris: I am not offended or anything else. I am trying to arrive—

Mr. Robertson: We realize you are trying to help us get the information.

Col. Harris: I am trying to help you get that information. You are legally entitled to that. I am trying to help you get the information which you are legally entitled to, and we do not object.

Mr. Robertson: I am wary of Greeks bearing gifts.

\* \* \* \* \*

The Court: Gentlemen, I will allow that question to be answered. I don't think it will work a hardship on you.

Col. Harris: 43 (b)?

The Court: Yes.

The next is 45.

Mr. Mullen: Do you want to read that?

The Court: What is your objection to 45?

Mr. Mullen: Our objection was that the salaries of the officers—

Mr. Robertson: Read the whole thing.

Col. Harris: I will read it.

“45. Did the Constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide, among other things, as follows:

page 129 } “ ‘The salary of the President shall be \$50,000 per annum; Vice President, \$40,000 per annum, Secretary-Treasurer, \$40,000 per annum; International Executive Board Members, \$1,000 per month; Tellers and Auditors, \$25.00 per day when employed. Each of the above mentioned officers shall receive, in addition to their salaries, such additional sums for additional service rendered as may be

authorized and approved by the President; together with all legitimate expenses when employed by the Organization away from their places of residence,'

and, if so, state the following:

"(a) During what period or periods did said Constitution so provide?

"(b) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did United Mine Workers of America pay to Thomas Raney, as a member of the International Executive Board of United Mine Workers of America, in addition to his salary, 'additional sums for additional service rendered'? If so, what 'additional sums' were paid to Thomas Raney; for what 'additional service rendered' were such payments made; and when were such payments authorized and approved by the President of United Mine Workers of America?

"(c) As used in the language quoted above, does the word 'Organization' mean the United Mine Workers of  
page 130 } America and its Districts, Sub-Districts, branches  
and subordinate branches, including District 50  
and United Construction Workers? If not, what does that word mean?"

There has been some confusion as between Mr. Mullen's memorandum and my memorandum as to whether or not all of that question was to be objected to, or only a part of it, or none of it.

Mr. Mullen: The objection, I used it this morning in arguing against interrogatories as a whole, is on the ground of showing prejudice by the fact that, quoting, in regard to the salaries of the President and so forth, was not a necessary part of the question, which was whether Thomas Raney had been paid anything extra and that the very fact that no other question was based on that, except as to Tom Raney, shows it was used for prejudice.

Col. Harris: Am I correct in this? We see no objection to answering, if he leaves off reading to the jury the salaries of these officers?

Mr. Mullen: That is right.

Col. Harris: And confines his question to the last sentence as applied to Thomas Raney. It may be that Thomas Raney was at work down there. He thinks he did something, he got some additional pay for. He is entitled to find out. We won't object to it.

The Court: You object to the salaries being read out?

Col. Harris: Read out and paraded before the page 131 } jury.

Mr. Pollard: That has nothing to do with approving agency, Judge.

Mr. Robertson: The whole Constitution, as I understand it, is going to be put in. Evidently nothing is going to be deleted. They are going to put it in, as I understand that. Now it is not for prejudice we tried to get in here the net worth of these different unions. The Court ruled we couldn't do it. The salaries of these people have got nothing to do with their net worth. We are not claiming they were over paid, not claiming anything else. What we are principally interested in— it never occurred to me it would prejudice—I don't see why it should prejudice them. Mr. Mullen says everybody that reads the papers knows what these salaries are.

Mr. Mullen: I didn't say that.

Mr. Robertson: We are principally interested in this, whether on account of what Thomas Raney did or anybody else, whether in United Construction Workers, District 50, or United Mine Workers, if they went down there and participated in what took place, if he got extra pay for it, we want to know about it.

Col. Harris: I only asked about Tom Raney.

The Court: I think the objection is about setting forth the salaries of the officers and the question is now without the salaries, without quoting the salaries as provided in the Constitution.

Mr. Robertson: Exception.

page 132 } Col. Harris: What is the next one?

Mr. Mullen: The next is Category 61 to 64, both inclusive.

Mr. Robertson: We are getting down to the heart of it now.

Col. Harris: Shall I read it?

The Court: Yes.

Col. Harris: "61. Who are the persons who served as Regional Directors of District 50 between the dates October 28, 1948, and August 4, 1949; when and by whom was each of these persons appointed a Regional Director; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as a Regional Director; what were the numbers of their respective Regions, and what were the locations of their respective Regional Offices?"

The Court: Suppose we take them one at a time and discuss them as we go down.

Mr. Mullen: We object to that on the grounds that this



question is not material to the issue in this cause, as applied to United Construction Workers in District 50. It should be limited to Region 58 of District 50, and United Construction Workers, being the district in which the wrongs complained of are alleged to have occurred. The territory page 133 } had a number of people and locals in Region 58, United Construction Workers. I have heretofore set forth a large number of those. This question is merely a fishing expedition.

As I said, District 50 has 58 Regions, The United Construction Workers. There are districts under the Regions. Persons who have served as Regional Director in each district have nothing to do with what happens in District 50. That is merely a part of an organization, just like a corporation with its directors, with its managers under those directors. It compares very well to Universal Leaf Tobacco Company, with its separate districts, a man on each market, in each town, and a man in charge of those districts. What one does in Oxford, North Carolina, doesn't concern what the one in Danville does. We have a similar situation here exactly.

I don't think that question is proper under those circumstances.

Mr. Robertson: If The Court please, we can't of course, ask but one question at a time. We are entitled to smoke it out here, to what extent, if any. If we don't smoke it out, it is a point in their favor. The same individuals serve in different capacities and are all bound up together in a common cause being advanced together by these three defendants, either through their component parts, or agents. We are entitled to ask that about the officers of each one of the three defendants. These Regional Directors, I think, page 134 } are well paid positions. Therefore, they are responsible people; they have responsible people in those positions. They have got stability. The same person occupies the same position for a number of years. They are put out, I believe, on one page of the United Mine Workers paper, every time it comes out, every two weeks. That is all they have got to go back to, it is already tabulated for them. I believe that the changes during this period of time we are asking about are almost negligible. All they have to do is to go back to their efficient publication, to find out the changes in them, if any. I think they will find practically none. We are entitled to that, to know it, to know the inter-relationship between these three defendants.

Mr. Mullen: That is one of the duplications of the specific questions I referred to.

Mr. Robertson: We think each person who is a Regional Director is also an official of the United Construction Workers. We think the same crowd occupies them, the same man occupies two or three positions, some of them in one thing, some in the other.

Col. Harris: Judge, I think in fairness to my client, which is the International Union of the United Mine Workers, that I should object to the constant repetition of the phrase, "smoke them out," as if we were some animal that was being chased, or as if we were deliberately trying to  
page 135 } conceal information. I have stated heretofore that we are trying to give every bit of information that we thought they were legally entitled to and we were not instructed to make every technical objection we could.

I don't think that Counsel is entitled under what Your Honor has seen today to use the phrase, "Smoke them out." "Smoke them out." There is no evidence that we have been hiding anything.

The Court: The Court will ask Counsel not to use that expression, "Smoke them out" again.

Mr. Cowherd: I would like to ask the Court, I don't believe Counsel for the Plaintiff would deliberately make an incorrect statement. That paper to which he referred, which he extended to the Court, is not put out by United Mine Workers. It is put out by District 50, NUCW. There is a paper put out by the Mine Workers.

Mr. Robertson: We are going to get that—NUCW. That is what we are trying to smoke out.

The Court: They objected to the words "smoke out".

Mr. Robertson: I didn't say it then, did I?

The Court: Yes.

Mr. Robertson: I apologize. What I say is each person who is a director of Region 50 is also an officer of United Construction Workers. This thing is going to show it, when we  
page 136 } get through, we are entitled to get that information.

Mr. Mullen: Exactly the same question.

"Who are the persons who served as Regional Directors of District 50 between the dates October 28, 1948, and August 4, 1949; when and by whom was each of these persons appointed a Regional Director; during what period or periods between the dates October 28, 1948 and August 4, 1949, did each serve as a Regional Director; what were the numbers of their respective Regions; and what were the locations of their respective Regional Offices?"

I have marked on it that you have ruled it will be limited to Region 58.

Mr. Cowherd: The Court will observe all of that, 61, 62, 63, and 64 are just rephrases of the same question.

The Court: It is my recollection, it was the Court's recollection it did restrict that to Region 58 in the interrogatories. I will restrict that to Region 58.

Mr. Mullen: Then No. 62 is the next one that asks the identical same question.

Mr. Robertson: I ask you read it, and pass on it.

Col. Harris: All right.

Mr. Mullen: Go on, read it, if you insist on it.

Col. Harris: I will now read question 62.

"62. Who are the persons who served as Regional Directors of United Construction Workers between the dates October 28, 1948, and August 4, 1949; when and by page 137 } whom was each of these persons appointed a Regional Director; during what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as a Regional Director; what were the numbers of their respective Regions; and what were the locations of their respective Regional Offices?"

I suppose the same ruling on that—

Mr. Mullen: Identical question was asked of the United Construction Workers, Your Honor ruled on it.

Mr. Robertson: What we are driving at here, Judge, I don't want to keep repeating the same thing, if Your Honor doesn't mind, I insist on it. Suppose they are the same individuals in Region 58 and also a whole lot of the same individuals everywhere else, or in other geographical areas. That is an element or factor in our proof as we see it.

The Court: Well, could you correct the question to the effect that any of the Regional Directors of 58, do they serve in any other regions. If you want to ask that question—

Mr. Robertson: I don't mean the Directors in 58. I mean out of these two concerns, the same man is a Regional Director in 58. Then you go over in some other Region, and the same man occupies both positions, then go into a third geographical territory. The same man occupies the two positions there. The sum total, every bit of it is cumulative proof of this inter-relationship and control. That is page 138 } all we are trying to show.

Col. Harris: We think if you limit it as you did before, to 58, that he may be entitled to that information, and as modified by Your Honor—

Mr. Robertson: Suppose that the same person occupies a dual position in ten different geographical areas and you limit us to showing it in Region 58. To our way of thinking, you have eliminated nine-tenths of our proof on that phase of the case.

Mr. Pollard: May I point this out? That the question deals with United Construction Workers, and in the interrogatories directed to them you have ruled that it should be limited to Region 58. Now this is a question directed to the United Mine Workers concerning United Construction Workers, and it is not information which the United Mine Workers should properly answer, because it concerns the United Construction Workers and that question has been put to them and limited as to them, so it certainly should be limited as to the United Mine Workers. The question still remains whether they can properly answer it.

Mr. Robertson: I understand I have the final say on this thing. Section 20—I believe Section 20 or Section 22 of United Mine Workers Constitution says that District 50 is a part of United Mine Workers. We claim it is the whole thing, all the way down through. If they don't know page 139 } this answer, of course, they don't have to answer it. As I said a moment ago, if the same persons occupy a dual capacity, like in ten different geographical areas, you confine us to Region 58, say we can't show it on the others, you cut out nine-tenths of our proof on that question.

The Court: I will restrict it to Region 58. The Court reserves the right to change its mind on that subject at a later date.

Col. Harris: The next one will be 63, won't it?

The Court: Yes.

Col. Harris: "63. Who are the persons who have served as Regional Directors of District 50 since August 4, 1949, and when and by whom was each of these persons appointed a Regional Director; during what period or periods since August 4, 1949, has each served as a Regional Director; what were the numbers of their respective Regions; and what were the locations of their respective Regional Offices?"

Mr. Mullen: That is the same question as in No. 61.

The Court: Is that the same question?

Mr. Robertson: It is the same thing after August 4.

Col. Harris: The date is different, that is all.

The Court: I see. We will let that be restricted to Region 58. The Court reserves the right to change its ruling on that at a later date; as presently advised, that is re-  
page 140 } stricted to 58.

Mr. Pollard: "No. 64. Who are the persons

who have served as Regional Directors of United Construction Workers since August 4, 1949, and when and by whom was each of these persons appointed a Regional Director; during what period or periods since August 4, 1949, has each served as a Regional Director; what were the numbers of their respective Regions; and what were the locations of their respective Regional Offices?"

Mr. Mullen: It is the same thing.

The Court: That would be the same ruling.

Col. Harris: The same reservation?

The Court: The same reservation.

. . . . .

Mr. Mullen: The next is the categories from page 141 } 96 to 103.

Mr. Pollard: "96. What written reports on work performed, on matters of policy or on organizational activities did A. D. Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America, or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August, 1949. Furnish a copy of all such reports."

Col. Harris: I think if it were limited—

Mr. Robertson: I think you might well eliminate furnishing a copy of the reports.

Col. Harris: I think if it were limited to Laburnum Construction, it would be less burdensome on us.

Mr. Robertson: We don't care anything about whether they were acting. We want to know what they were doing in that territory.

Mr. Mullen: We say in that territory—

Mr. Robertson: We ask that they furnish the reports. The reason we do that, Your Honor, Mr. Bryan has seen some of those reports. Those reports are kept in a very orderly way and very correct way and they are not particularly voluminous. We ask that you restrict it to 58, and furnish copies of the records, bring the original of the reports, have them here during the trial, and if they go in evidence, page 142 } we will undertake to have photostats made if necessary, and they can be withdrawn and copies substituted.

Col. Harris: We just make a copy and attach it to our answer, under the laws of Virginia.

The Court: That will be all right.

Mr. Mullen: You said you had seen copies of reports made by A. D. Lewis?

Mr. Robertson: No, I didn't say that. I said I had seen some of the reports. I haven't seen them, but Mr. Bryan has seen some of the reports, or copies of the reports made from people in Region 58.

Mr. Cowherd: That is not what the question asks for.

The Court: This 96 will be restricted to Region 58.

Mr. Robertson: And furnish copies of the reports?

The Court: Furnish copies of the reports.

The next is 97.

Mr. Pollard: "97. What written reports on work performed, on matters of policy or on organizational activities did Kathryn Lewis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United  
page 143 } Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

Mr. Mullen: The same restriction will be put on that?

Mr. Robertson: If you restrict that to 58, it would conform to the ruling.

The Court: Furnish copies. Restrict it to 58.

Mr. Robertson: As I understand it, the Court is reserving the right to change these rulings. It all comes down to the same thing.

The Court: Of course, the Court can change the rulings at any ytime in regard to these interrogatories, as I understand.

Col. Harris: You are merely serving notice on us as to the uncertainty of your feeling on 61, 63 and 64. You have not said you were reserving rulings on these others.

The Court: I have not said so. I take it the Court can reserve rulings in any point in these interrogatories.

Col. Harris: I think so.

Mr. Pollard: No. 98.

"98. What written reports on work performed, on matters of policy or on organizational activities did O. B. Allen, as an employee or representative of United Mine Workers of America or District 50 or United Construction  
page 144 } Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United



Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

No. 99.

Mr. Mullen: No. 98 and 99 are similar.

Mr. Robertson: I want you to read it. There is no use getting irritated about it, Mr. Mullen. We tried to get through that way up here the other day. I wrote a memorandum, waited ten days, and you said I had it wrong.

Mr. Mullen: All right. Read them.

Mr. Robertson: I take it you will restrict No. 98 to 58?

Mr. Pollard: Furnish copies of such reports?

The Court: All right. Restrict that to Region 58.

Mr. Pollard: No. 99.

"99. What written reports on work performed, on matters of policy or on organizational activities did Thomas Raney, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the page 145 } International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

Mr. Robertson: Restrict that to 58.

Mr. Pollard: No. 100.

"100. What written reports on work performed, on matters of policy or on organizational activities did Thomas Davis, as an employee or representative of United Mine Workers of America or District 50 or United Construction Workers, submit to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

Mr. Robertson: Restrict that to 58.

Mr. Pollard: The next is the same except—

Col. Harris: That was No. 100 that you just read?

Mr. Pollard: Yes.

Mr. Robertson: Restrict 101 to 58.

The Court: No. 101 is restricted to Region 58.

Mr. Robertson: Restrict No. 102 to 58.



Mr. Pollard: No. 101 refers to David Hunter. No. 102 refers to William O. Hart.

Mr. Robertson: Restrict that to 58.

page 146 } The Court: All right.

Mr. Robertson: Restrict 103 to Region 58.

Mr. Pollard: Question 103 refers to H. G. Robinson.

The Court: All right.

Now, we go to 105.

Mr. Pollard: "105. What written instructions, statements, reports, memoranda, letters and other papers were submitted by District 50 or by its Administrative Officer or Secretary-Treasurer or Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers."

Mr. Mullen: That is the question I argued in part this morning and argued against the whole. Those questions are so plainly a fishing expedition, that they certainly, your Honor, violate in themselves the Fourth Amendment of the Constitution and they impose an unreasonable burden on the defendant.

Mr. Roberts: I think I can shorten that. I think under the ruling of the Court, that would have to be restricted to Region 58.

page 147 } The Court: I think I restricted it to Region 58 in these other interrogatories.

Mr. Mullen: I think you did in all of those.

The Court: Let's restrict 105 to Region 58.

Mr. Pollard: "106. What written instructions, statements, reports, memoranda, letters and other papers were submitted by United Mine Workers of America or by the International Executive Board or the President or any other International Officer of United Mine Workers of America to District 50 or to the Administrative Officer or Secretary-Treasurer or Comptroller of District 50 between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers."

Mr. Robertson: Restrict that to 58.

The Court: Restricted to 58.

All right, 107.

Mr. Pollard: "107. What written instructions, statements, reports, memoranda, letters and other papers were submitted by United Construction Workers or by its National Director

or National Comptroller to United Mine Workers of America or to the International Executive Board or the President or any other International Officer of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949? Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers."

Mr. Robertson: My client makes this suggestion, I think it was the understanding, it was my understanding, suppose that something applied in part to Region 58 and applied also to something else. Of course, that would be called for in that answer.

The Court: I take it that would come under that answer.

Mr. Mullen: Of course, we are not splitting the questions.

The Court: How about 107, would that be restricted to Region 58, in accordance with the other rulings?

Mr. Robertson: Yes, that is restricted to Region 58.

The Court: Very well.

No. 108, would the same apply?

Mr. Robertson: Yes.

The Court: Restricted to Region 58.

Mr. Mullen: What about 109?

The Court: The same ruling, wouldn't it, 109?

Mr. Robertson: Yes, I think so.

The Court: No. 109 is restricted to 58.

No. 110 is restricted to 58.

Mr. Robertson: All right.

page 149 } The Court: No. 111?

Mr. Robertson: I think 111 would be restricted to Region 58.

The Court: All right. 111 will be restricted to Region 58. What about 112?

Mr. Robertson: I would like the gentlemen to read into the record now, if they have no objection, what geographical territory Region 58 includes. I think I know. We are restricting it here now.

The Court: Do you gentlemen have any objection?

Col. Harris: I don't know.

Mr. Cowherd: We have no objection to making it. I can't accurately give it at this time. There are ten or twelve counties in all, some in Kentucky, some in West Virginia, and Breathitt was one.

Mr. Robertson: Will you give it to us before the trial?

Mr. Cowherd: I think we will under one of your questions. We are going to furnish that complete geographical area. I have got that already prepared.

The Court: Fine.

Mr. Robertson: 112 will be the same?

The Court: 112 will be the same, restricted to Region 58.

Now, we jump to 118.

page 150 } Mr. Mullen: That is the same question, 118 and 119, that you directed in the other interrogatories to be changed so as to have the "yes" and "no" answer. In other words, instead of reading, "What charter fees, initiation fees and dues were paid to United Mine Workers of America by its District Unions, Sub-District Unions, Local Unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949?" it would change the word "what" to "were".

No. 119 is the same thing, only you put "what" down in next to the last line.

Mr. Robertson: Read that.

Mr. Mullen: "119. With respect to charter fees, initiation fees and dues paid to District 50 by its Sub-District Unions, Local Unions, and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, what portion or portions of such fees and dues were paid by District 50 to United Mine Workers of America?"

Mr. Robertson: There is the addition of the word "were". My recollection were they need not put it in dollars, but put it in percentage.

Mr. Mullen: Here is the word you submitted to me in your letter of September 28: "Were charter fees, initiation fees and dues paid to United—" page 151 }

Mr. Robertson: What question are you on? That doesn't correspond here with 119.

Mr. Mullen: I think it will. "Were charter fees, initiation fees and dues paid to United Construction Workers and Local Unions and Members between the dates October 28, 1948, and August 4, 1949, also after August 4, 1949, and was any portion of such fees and dues paid by United Construction Workers to District 50 or United Mine Workers of America." That is what I was speaking of, that language in 119 that now reads, "What portion or portions", and the Court directed it should read, "Was any portion of such fees paid".

The Court: Does that answer it?

Mr. Robertson: I don't see any objection made to any percentage. They were loath to state it in dollars.

The Court: As I recall it, the reason they objected to that was they would have to get all of these figures together. What

you were interested in was in knowing whether any portion went—

Mr. Robertson: Change that "what portion" to, "was any portion". I have got that all right.

The Court: I think that answers the question you want.

Mr. Mullen: The same thing in 120, "What page 152 } portion" should read, "Were any portions".

The Court: 121.

Mr. Mullen: We have 120 here that we have already fixed.

The Court: 121 (a) is next.

Mr. Robertson: I think we reframed that before. "Were funds advanced".

Mr. Mullen: Yes. That read, "Were funds advanced or paid by United Mine Workers of America to or for the account of District 50 or United Construction Workers, and why were such advances or payments made?"

Col. Harris: May I interrupt a minute?

The Court: Yes.

Col. Harris: I am not clear as to the wording on 120.

The Court: In other words, on the end of the fourth line of Question 120, it reads: "What portion or portions". That would be changed to read: "Were any portion or portions".

Col. Harris: O. K. I have it.

Mr. Cowherd: The next word "were", would naturally come out to make it grammatical.

The Court: Yes.

Mr. Pollard: No. 121, part (a), reads:

page 153 } "(a) What funds were advanced or paid by  
United Mine Workers of America to or for the  
account of District 50 or United Construction Workers, and  
why were such advances or payments made?"

It is my recollection on the other interrogatories and our notes so show, that you ruled we did not have to answer the part which reads, "And why were such advances or payments made."

Mr. Mullen: My notes show the same thing.

Mr. Robertson: I have no recollection, but I don't see why they shouldn't say "why". Suppose they were putting up the money for the agent, why shouldn't they show it?

Mr. Pollard: May I say something?

The Court: Certainly.

Mr. Pollard: I believe you will recall the argument. I was sitting where Mr. Mullen is, and Mr. Mullen where Mr. Robertson is. They held a conference there and I couldn't help overhearing, "It makes no difference whether an agent

was paid one dollar or ten; the reason why one was paid is immaterial, if the money was paid."

Mr. Robertson: I think it may be highly material, the reason for it being paid. I tried to convince Mr. Bryan on the principle that applied. I think you may give me some money as a gift, or you may give it to me to buy a piece  
page 154 } of real estate, or you may give it to me for running Laburnum off the job, which would be very important.

The Court: In other words, maybe a loan or something of that sort, or maybe something is due.

Mr. Robertson: Maybe Raney did such a good job at the top—we are going to see.

The Court: I think it is fair to answer that question, to see why the answers were made. So "a" will be amended.

Col. Harris: May we reserve an exception on that?

The Court: Let me state again: 121 (a) will now read: "Were funds advanced or paid", and so forth, instead of "what funds were advanced".

You go ahead and make your exception.

Col. Harris: I wasn't taking any exception to that. It is the last end, I think is improper.

Mr. Mullen: We take an exception to the inclusion of the words, "Why were such advances or payments made".

The Court: Go ahead and except to the last part of the question.

Mr. Mullen: I think he has already got it in. He stated the exception.

Col. Harris: We reserve an exception to your Honor's ruling to the effect that we must answer this clause: "Why were such advances or payments made?"  
page 155 }

Mr. Mullen: That is (a) and (b).

Mr. Pollard: An exception to both.

The Court: The amendment will apply to (b), as well as (a), and the same exceptions will apply.

Mr. Pollard: That is right.

Mr. Robertson: That is evidently worded wrong. There is no (a) and (d) to 123. I have got 121 (a) and (b), and you go to 123 (a) and (d). There is no 123 (a) and (d). Your Honor ruled on 121 (a) and (b).

Mr. Mullen: Your Honor has already ruled that we did not have to furnish balance sheet, did not have to furnish statement called for in Question 124.

Mr. Robertson: Let's take up 123.

Col. Harris: May I interrupt a second? We are almost through.

Mr. Robertson: I have got a lot more stuff.

Col. Harris: We haven't received any notice to appear on any motion.

The Court: Go ahead and make the statement.

Col. Harris: Mr. Pollard raised the question, if I got it correctly, as to your Honor's ruling on 121. I want to be sure I have that down, if your Honor doesn't mind.

The Court: All right, go ahead.

Col. Harris: I have here that 121 (a) is changed now to read: "Were funds", instead of "what funds".  
page 156 } The Court: That is right.

Col. Harris: Then, as so changed, we must answer. As to 121 (b), the same change, "What funds", to "were funds", but you also ruled we had to say "why" on 121 (b), and to that we reserve an exception.

The Court: Exactly.

Mr. Mullen: That is all in the record.

Mr. Robertson: Coming down to 123.

Col. Harris: Have you read 123?

Mr. Pollard: No.

Mr. Robertson: I have no recollection on that. If somebody will say what happened, it will come to my mind, I think.

The Court: "Furnish a balance sheet of United Mine Workers of America showing its assets and liabilities and net worth as of December 31, 1949."

Mr. Robertson: Have you your file copy of that letter?

The Court: Mr. Mullen's copy to me stated an exception to 123 (a) and (d) on that one.

Mr. Robertson: That may be a typographical error.

The Court: This is under Mr. Mullen's signature. There is no 123 (a) and (d).

Mr. Robertson: I will ask somebody to give their recollection as to what we did in the other instance about page 157 } the balance sheet. I don't remember.

The Court: As the Court recalls, it ruled out the balance sheet on both sides.

Mr. Robertson: All right. It would come out here. 123 will not have to be answered.

The Court: What about 124?

Col. Harris: "Furnish a statement showing the following with respect to United Mine Workers of America: (a) Cash balance on hand as of January 1, 1949, (b) Receipts during the year 1949, (c) Disbursements during the year 1949, and, (d) Cash balance on hand as of December 31, 1949."

Mr. Robertson: That was ruled out last time, the same ruling here?

The Court: The same ruling.

page 158 } The Court: No. 125.

Mr. Mullen: "Furnish a copy of the minutes of all meetings of the International Executive Board of United Mine Workers of America held between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949."

Mr. Robertson: You have ruled that had to be answered, your Honor.

Mr. Mullen: No, ruled the minutes of the Local 178A had to be answered.

Col. Harris: There are many matters, we would be revealing confidential information of coal operators that had nothing in the world to do with the entire state of Kentucky, much less Breathitt County, sir. The Executive Board, as the Constitution shows, is the "Supreme Court" between conventions and they handle multitudinous matters and to take and copy all the minutes of everything they had, would be just opening up all private and confidential business of United Mine Workers for publication.

Mr. Robertson: Your Honor, please, I don't think this makes sense. "Furnish a copy of the minutes of all meetings of the International Executive Board of United Mine Workers of America held between the dates October, 1948", down to date. If it is confidential and should not be revealed, the Court will not have it divulged.

Mr. Mullen: Necessarily, the decision of that page 159 } Executive Board are confidential.

The Court: Here was a similar question, wasn't it?

Mr. Mullen: I have got the question right here.

"Minutes of the organizing committee of District 50. Minutes of all meetings of Local 178A." As I say, they are very different things, and of the "International Executive Board of United Mine Workers".

Col. Harris: I think anything relative to Laburnum Construction Company, they would be entitled to it.

Mr. Cowherd: Region 58.

The Court: What I was thinking about, Region 58, how about that?

Col. Harris: That would make us disclose the private affairs of other operators in that region.

Mr. Robertson: The Court could determine that when it comes up. We want to see what their minutes show here about these interrelationships. We think we are entitled to see it.



Mr. Cowherd: That isn't the question. He doesn't limit his question to any minutes dealing with interrelationships. Every important matter that the United Mine Workers had during that period that went before the Executive Board could be brought into this case. International affairs between Canada and the United States might conceivably be defense matters, and might conceivably have no connection or anything else.

page 160 } The Court: I think that question is rather broad, Mr. Robertson.

Mr. Robertson: Well, what are you going to restrict it to, your Honor?

The Court: Let's see if we can arrive at some logical conclusion on that one.

(Discussion off the record.)

The Court: On the record.

Col. Harris: The other questions he asked, and where you applied them to Region 58, did not require, as we saw it, that we disclose any confidential information of other operators and other businesses. The financial dealings with other people, say. Now, any financial dealings that affect the Laburnum Construction Company, he would be entitled to. But suppose they have had extensive dealings with corporation "X", Corporation "Y", and Corporation "Z", and don't even know Laburnum Construction Company is in existence, never heard of them. As a matter of fact, there has been a lot of talk here about Mr. John L. Lewis. I venture the assertion Mr. John L. Lewis never heard of Laburnum Construction Company in his life until litigation developed.

It would just be going where we have this past mechanism covering many states, hundreds of thousands of men and the private business of individuals and corporations and associations engaged in production of goods for commerce, and producing the necessities of American life which seems to me that a proper regard for the rights of bystanders requires that we do not have to come in and tell him their business.

page 161 } Mr. Robertson: Your Honor, please, of course we won't get anything out of—the whole talk all day is Laburnum Construction Company is small potatoes compared to these Unions, John L. Lewis never heard of them. I think it would be a miracle if you would find anything—I won't go that strong, but it may very probably be that you won't find any specific reference by name to Laburnum Construction Company in those minutes. That is not the purpose of the ques-

tion. The purpose of the question is during those periods there, what were they telling their people down the line.

Even under the Coronada case, out of the Federal decisions, you have got to have specific authorization or specific ratification. And they claim that case applies here, as I understand it. We claim it doesn't. How else are you going to show it except through their minutes? We want the minutes of that Executive Board to show, yes, restricted maybe to Region 58, but what did you tell them to do within that District? What did you tell them? What did they tell you? What did you do about it? That goes to the very heart of our case.

Mr. Mullen: Minutes of the Executive Committee have to do with—

page 162 } Mr. Robertson: I haven't finished.

Mr. Mullen: All right.

Mr. Robertson: I don't understand, the Court comes along on my *ipse dixit* says that would show the private business of the coal company. I don't understand that the Court sticks its head in the sand and refuses to get enough information to act intelligently, just because somebody say that is interpretation of the thing.

As I said, the Court will require that to be answered here. Then if the Court thinks any part of it is improper, then I think it is highly probable some parts of it will be improper to go to the jury, the Court will rule out the part that ought not to go to the jury, delete it from the record, have it destroyed on the record, if the Court thinks that is going to violate any great business secret.

Mr. Mullen: If your Honor please, like the Board of Directors of a corporation are not dealing with the actual administrative affairs, they are dealing with larger matters, matters of policy. These minutes in those two years will, I assume, show matters in regard to negotiations of the last contract with the coal operators and John L. Lewis.

Col. Harris: That is right.

Mr. Mullen: They will show the discussions in that Board, that private matter.

Mr. Pollard: And the pending negotiations.

page 163 } Col. Harris: I will call it to your Honor's attention, if we have to give those minutes, and we will assume that many of them involve financial matters, then your Honor's ruling on 123, 124 would be nullified.

Your Honor ruled we didn't have to make financial statements. That had no concern with the case. Our instructions, if I may state to the Court, our instructions were not to put in any unnecessary technical objections. We were asked to protect the private financial matters of the Union and with

people that it dealt with that had nothing to do with this case.

The Court: I am wondering whether or not this would be feasible? Would you gentlemen object to one counsel for the plaintiff to kind of thumb through the minutes and see if there was anything in there?

Col. Harris: I have no authority to open the minutes to anybody on earth, Judge. I, myself, have never read a copy of the minutes of the International Executive Board. I have never had any occasion to read them. But Mr. Mullen didn't go up—I went up to Washington for the sole purpose of checking up on the objections that Mr. Mullen and I had figured out with Fred. And some of those we had figured out that we put in, Mr. Lewis said, "No, don't put them in. Go ahead. Make the answers."

Mr. Robertson: Following out the thought your Honor had there, I would be perfectly willing for them page 164 } to submit the minutes to the Court and the Court rule on what it thought was proper and improper. I have got no desire to get in anything improper here. I don't want to just read somebody's *ipse dixit*. He said he never read them. I don't know what is in them. I have not read them. I am not ready to accept anybody's judgment except the Courts as to what I am entitled to see out of it.

Col. Harris: I don't ask anybody to accept my statement. He doesn't know me.

Mr. Robertson: I say you haven't read them. It is no reflection on you. If you haven't read them, you can't know what is in them.

Col. Harris: I have no authority but I would recommend that they make no objection to your Honor reading them. I don't feel in view of instructions that I received, that I should deviate from them this afternoon.

The Court: I understand your position.

Mr. Robertson: I understand. I don't think it is proper for John L. Lewis or anybody else to be putting this Court on terms.

The Court: No, I don't think so, either, but there is a question in my mind whether I should require this question as framed to be answered. There is bound to be voluminous minutes there that haven't a thing in the world to do with this case.

page 165 } Mr. Robertson: I don't know whether there is or not. I don't know how often they met. This is supposed to be one man's Union. Nobody here has ever seen them. It might be one separate minute, a page, or it might be a book. If it is kept in any orderly way, it ought to

be in a book to be presented here to the Court and to be determined very easily if they really wanted to give us the information we are entitled to.

Col. Harris: As I say, Judge, I know your Honor reserves the ruling, the right to change the ruling a while ago. I don't think personally that he has any right to it at all, but of course we are willing to rely on the interpretation of the Court. If the Court looks at them, says even though it has nothing to do with it, even though you learn secrets that don't concern you, business matters you are not interested in, if your Honor thinks that is what we ought to do, I will recommend it to them. You see, what I am doing is in a way trying to let the rulings of your Honor today be the end of it.

The Court: Would there be any objection if the minutes were brought here and in the presence of counsel for both sides and the Court, just thumb through them to see if there was anything in there?

Col. Harris: The Court will thumb through them, not counsel on both sides.

Mr. Robertson: That is all right.

page 166 } The Court: You wouldn't want counsel on both sides?

Col. Harris: No, sir.

Mr. Cowherd: I have seen those minutes. I am confident that this firm of lawyers representing the other side of this case has clients whose business might appear in there, and does appear in there. And there might be exchange of information there that they are not entitled to. It is just confidential stuff. I don't think any Court would require, and I don't think any lawyer on the other side should look at those minutes. But I, too, would recommend that your Honor be allowed to deal with that part. I can assure you that you wouldn't want to deal with the entire volume, regardless of what Mr. Robertson says about a one-man Union, no minutes, no meetings. I am quite sure you wouldn't want to take the time to go through all of them.

Mr. Robertson: You don't want the Court to go through it conscientiously? I think I have the right to close this discussion on this phase of it.

The Court: Let him get through before you close. Are you through?

Mr. Cowherd: That is all right.

Mr. Robertson: I say, even under the Coronado Case, they say in order to hold either District 50 or United Construction Workers in here, we have got to show prior  
page 167 } authorization directly or subsequent ratification directly. Now, where is a better place to find out

whether it was or was not done than in these minutes? What is the equivalent of a Board of Directors in their organization?

The Court: Could the question be framed to furnish copies of minutes of the meetings which deal with the very things that you are talking about rather than just furnish copies of all the meetings? Then you are asking specifically for certain copies of the minutes.

Mr. Mullen: In those cases I read your Honor this morning, that is all they can ask for.

The Court: That might work.

Mr. Robertson: Restricted to Region 58, District 50 is the whole United States. He has been holding it down here to Region 58.

Col. Harris: Region 58 is 43 states.

Mr. Cowherd: It is 42 states.

Col. Harris: Coal producing states, coal producing districts.

Mr. Cowherd: Coal producing districts, and districts of United Mine Workers, as listed in the roster that Mr. Robertson has in his possession.

Mr. Robertson: You don't admit that is in the form that I can introduce it in evidence? I am getting my evidence in shape.

page 168 } Mr. Cowherd: Region 58 in this case, as I see it, is in Breathitt County, that is where it happened.

Mr. Robertson: You know, as I do, that no more embraces all of Region 58 than Henrico County, Virginia, does. I have never heard of such argument.

Mr. Cowherd: I didn't say it did.

The Court: We are getting off the subject here.

Mr. Pollard: Judge, your suggestion about looking at them in the presence of counsel, you meant in the presence of counsel and not have the counsel look at them, did you?

The Court: Well, I would prefer that both counsel look at it with me.

Mr. Robertson: I am perfectly willing to pass up looking at it.

The Court: Just let the Court look at it?

Mr. Robertson: Yes, but I want the books here, and let the Court make such examination as the Court deems proper, make such ruling as the Court deems proper. That is satisfactory to me.

The Court: After having seen the minutes?

Mr. Robertson: That is satisfactory to me, yes.

The Court: Is that satisfactory to you, gentlemen?

Mr. Cowherd: We couldn't stipulate that.

The Court: I understand you have got to recommend.

Col. Harris: That means by no device and  
page 169 } maneuvering or change of position or anything  
else, does anybody get to see it, if your Honor  
has it.

The Court: It will be private property. The agreement  
will be strictly complied with, as far as the Court is con-  
cerned.

Col. Harris: If you don't object, and if you, Mr. Mullen  
and Mr. Cowherd, don't object, we will recommend that that  
be done, Judge.

Mr. Robertson: By when, your Honor, is that going to  
be done? When the answer is on these things the 15th of No-  
vember, or is it going to be done before that? If they put it  
off, we won't have time to act.

The Court: Why not do this, you gentlemen contact the  
officers or the proper persons of the Union and see whether  
or not they are willing to voluntarily comply with your re-  
quest, and you notify the Court. It may be that they will re-  
fuse to do that. Then if they do, the Court will be in position  
to know what step to take next. In the meantime, I think the  
Court will withhold any decision on this Question 125.

Mr. Robertson: Will you put a time limit there, if your  
Honor please?

Col. Harris: That is what I am going to talk about. I am  
somewhat crowded. I had to fly up here and I have to fly back  
Sunday morning, because I must before the United States

Court of Appeals for the Fifth Circuit in Mont-  
page 170 } gomery, Alabama, 101 miles from Birmingham  
where I live, Tuesday morning. So I am having  
to fly right back Sunday morning and get home and then leave  
next morning for Montgomery, Alabama. I won't get a chance  
to see any United Mine Workers officials.

The Court: How about you, Mr. Cowherd? Are you going  
back to Washington?

Mr. Cowherd: No, I am not. My work is taking me in the  
opposite direction.

Col. Harris: Mr. Cowherd couldn't come yesterday. He  
had to be in Hartford.

I don't devote all of my time to United Mine Workers'  
business. I am engaged in the general practice of law. I had  
this case set down in the Court of Appeals. I don't work  
for anybody.

Mr. Cowherd: I am afraid it is not going to be a simple  
question to get answered. I don't believe any one of the  
officials will take the responsibility for doing it. After listen-

ing to the discussion of why we should not disclose the general minutes to anybody outside the organization, I don't know how they will feel about it. I won't be back until Monday morning.

The Court: You will be back to work Monday?

Col. Harris: You go ahead and state the problem. If they want to call me in Birmingham, or if you want to call me, all right.

page 171 } Mr. Robertson: The only point I make, Judge, I, of course, realize we ought to give a fair time to do the thing. There ought to be a time limit it, to bring this question to a decision.

The Court: You could let me know by the end of next week, couldn't you?

Mr. Cowherd: Sure.

Col. Harris: Yes.

The Court: That is a reasonable length of time.

Col. Harris: We have no disposition to delay. We understand the case is going to be tried the second week in December.

Mr. Robertson: I have some more interrogatories, which you have copies of, I think, Mr. Mullen.

Col. Harris: Judge, I don't know what his interrogatories are. When we came here this morning, counsel handed one after the other to Mr. Mullen.

Mr. Robertson: I haven't gotten to those.

Col. Harris: I don't know what your Virginia rules are, but we have got to get our defenses in by Monday morning. It seems to me, to take any other interrogatories up now, shortens our time and is unduly burdensome. I submit no adequate notice has been given to us.

Mr. Robertson: Mr. Harris, you weren't here before. What I am talking about now is about interrogatories filed in here on October 2, 1950, because they were inad-  
page 172 } vertently not left with the Court on September 26, and Mr. Wickham, who was here then, refused to come up here with me to get the things in order. If the Court will look at them, I made a certificate on them, three sets of interrogatories.

The Court: Are these the ones?

Mr. Robertson: These are the ones this morning. I have the ones before this.

The Court: You have one before this?

Mr. Robertson: Yes.

Mr. Mullen: I told Mr. Wickham to tell you we had no objection to you filing them, by reason of the fact you failed



to do it the day we were up here. I said I had no objection to you correcting that.

Mr. Robertson: Those are the ones they say there is no ruling on. They have had them. I understood you accepted them.

The Court: Here they are.

Mr. Mullen: In the supplemental interrogatories, we will object to 1 and 2.

Col. Harris: You want to get a ruling on 1 and 2, don't you?

Mr. Robertson: They are here, Judge.

The Court: "Was application ever made by United Mine Workers of America, to the National Labor Relations Board requesting that United Mine Workers of America be certified as the bargaining agent for the employees of the plaintiff."

Mr. Robertson: The reason I asked that, they asked that question of us in their own interrogatories. We answered it. If they had the right to ask us that question, we had the right to ask that.

Mr. Mullen: It is a very different situation.

The question is objected to on the ground it is not relevant to the issue in this cause, in that the right to organize workers is not dependent on any ruling or order of the National Labor Relations Board, that there are other methods of determining whether a given set of employees are represented by a Union and the right to strike is not dependent on application to or action by said Board.

In addition to that, before any application or anything could be made, they discharged the workers and were no longer in their employ.

Mr. Robertson: Now, your Honor, I agree that the Labor Relations Act has nothing on earth to do with this case, and the question of whether we ever applied for anything with the National Labor Relations Board, has got nothing to do with it. It was not in a Federal Court, not under the Labor Relations Act, not under any Federal Statute. They did ask us the opposite of this question, and we voluntarily answered it. We then want the other interrogatory and answer stricken out.

Mr. Pollard: May it please the Court, are you through?

Mr. Robertson: Yes.

Mr. Pollard: There is a provision in the National Labor Relations Act which might have created liability on the part of the defendants, had the Paintsville carpenters been certified by the National Labor Relations Board as the bargaining

agent; therefore, it became on us to know whether or not it had been created. Whether or not we had applied for certification, is entirely immaterial.

Mr. Robertson: I can't follow that line of reasoning, your Honor. Mr. Lowden here, I think, knows as much about the Labor Relations Act as Mr. Pollard. I just don't follow that line of argument.

Mr. Pollard: If the Paintsville carpenters had been certified as the bargaining agent, then under the Taft-Hartley Act there is a possibility that we would have been liable for calling the strike; otherwise, not.

Mr. Lowden: Since we didn't sue you under the provisions of the Taft-Hartley Act, then your interrogatory wasn't relevant.

Mr. Cowherd: Yes, it was, because it gives you the right to sue in either Court, State or Federal.

Mr. Pollard: The way the notice of motion for page 175 } judgment is drawn, you could have very well taken that position. So it is relevant as to us, but it is not as to them.

Mr. Robertson: I don't think it is relevant to either. If it comes in for them, it ought to come in here.

The Court: The Court will refuse to require the defendant to answer interrogatory No. 1, and will take under advisement the motion of counsel for the plaintiff to strike the like question in the interrogatory addressed to the plaintiff.

Mr. Robertson: I suppose you have the same ruling on No. 2?

Mr. Mullen: The second question.

The Court: There is no objection?

Mr. Mullen: No.

Mr. Robertson: We put in three additional sets of interrogatories here this morning, I did.

Mr. Pollard: Before you start, may I straighten one thing out. There were three sets of interrogatories on those questions. I take it your ruling applies to Questions 1 and 2, addressed to all three defendants?

The Court: All three defendants, yes.

Mr. Robertson: Now, if your Honor please, I have given you gentlemen copies of them. This first set goes to—

Mr. Pollard: We were just handed this paper page 176 } at the week end. I think it is unfair to ask us to make up our minds on it at this time.

Mr. Robertson: I will be frank, I am trying to get these things answered by the 15th of November, which is the time the Court said, and I am presenting them here to the Court now. So if you don't want to answer them today, if we can

agree upon a date when they will come here and let the Court rule on them, they are short.

Col. Harris: It is a novel experience to me, that a man hand you interrogatories and says, "Now, let's take up whether you want to answer or not."

The Court: The Court is not going to require you to answer them.

Mr. Robertson: I am not asking that. I am talking about wanting to cooperate in helping get information and move along. I haven't seen any evidence today of it.

Mr. Mullen: I haven't seen any on your part.

Mr. Robertson: I haven't offered any, I have put them out here today so we can determine today when you will come back and get the Court to rule on them.

The Court: How many questions are there in the interrogatories addressed to all three defendants? Are they the same questions addressed to each defendant?

Mr. Robertson: Practically. They are a little different.

I mean in one of them there we call for copies of page 177 } those publications. I thought that we would save time by doing it today.

The Court: The Court is prepared to go ahead. Of course, it is unreasonable to require the defendants to.

Mr. Robertson: I agree to that.

Mr. Cowherd: I suppose I am the only one that could possibly know all of the men, and it happens that I don't know the first one. I would have to start calling to find out who he is. We don't know whether we can answer it or not.

Mr. Robertson: That is why I am bringing it up. I ask the Court to set a date.

Mr. Mullen: I certainly don't want to pass on it. I have been sitting here with no chance to read them.

Mr. Robertson: I am asking the Court to fix a date.

Mr. Mullen: Wait until we read them.

Mr. Robertson: I ask the Court to fix a date.

Mr. Mullen: I have taken the last two weeks with you.

Mr. Robertson: I am not asking favors. I will ask the Court to fix a date.

Mr. Mullen: I am submitting to the Court that I have two cases which have got to be answered, all the pleadings and everything, by the 28th of October, and it is jurisdictional unless I answer. And for two weeks or more, I have been working on this thing. I have got to do that.

Mr. Robertson: I ask the Court to fix a fair date.

The Court: It is a question of when we can, of when I

am here. It may be that after you all read those interrogatories—

Mr. Robertson: Then we can release the date, just as we released two here this time.

The Court: Off the record.

(Discussion off the record.)

The Court: On the record.

How about the 24th at three o'clock?

Mr. Robertson: I want to refer now to another letter I received from Mr. Mullen on October 10, by messenger, regarding a letter I wrote him on September 28, setting out my recollection of what occurred in here on September 26.

I sent a copy of that letter to the Court. Mr. Mullen says this:

"This will acknowledge receipt of your letter of September 28, in which you outline your understanding of what occurred on September 26, 1950, at a conference between Judge Snead and counsel for all parties.

"Paragraphs numbered 1, 2, 3, 4, 5, and 6 correctly state what took place.

"7, I do not recall giving any definite date on page 179 } which you or the Court could be advised whether the cases referred to therein would be consolidated. Certainly I did not give as such date, October 10. I will, however, endeavor to dispose of this question on October 12, or certainly during the present week."

Now, as I understood it, the reason I am bringing that up, it has been intimated here, you remember there is a case pending in this Court with the Unions, I think, and various individuals brought against Laburnum Corporation, and Bryan, individually. It has been intimated here that the counsel for those plaintiffs may ask the Court to consolidate the two causes. We think that they should not be consolidated. The parties are different, the pleadings are different, the issues are different. We are going to oppose it, if they press their motions. We want to argue it and cite authorities. And we don't want to get up here to the trial date before that happens.

I understood Mr. Mullen will let us know this week whether or not they do want to press that motion. If they do, I want to fix a date for that.

Mr. Mullen: I said I would let you know. I think there are some matters Mr. Pollard has got to take up with the

Judge on that. I think there are certain questions he wants to take up with the Judge, and that the Judge wants to take up with him.

Mr. Robertson: I want to get that out of the way.

The Court: Why can't we dispose of that on page 180 } the 24th?

Mr. Robertson: If they are really serious about it, I don't think we can. We will go ahead as far as we can. That is all right with me.

The Court: Do you want to say something?

Mr. Pollard: Yes. We are confused, and I want to broaden the scope of the discussion just a bit, about the application of the new trial procedure to this case. This case was started in 1949, and under the old rules, we filed a plea of not guilty, which completes our pleadings. And since our pleading was completed, we do not know whether or not any provisions of the new rules apply, and our first problem is this:

Mr. Robertson: Are you talking about this case we are discussing here today?

Mr. Pollard: Yes.

Mr. Robertson: I can tell you right off the bat what I think.

Mr. Pollard: I wasn't quite through.

I can tell you that we have got to file our grounds of defense by the 16th of October. I understand from the new rules, that when you file your grounds of defense, you have got to either admit or deny the allegations of the bill of complaint.

Now, in filing our grounds of defense, do we page 181 } have to do that, or do we file grounds of defense under the old rules because we had completed our pleadings under the old rules, when we filed a plea of not guilty?

The Court: Do you want to express yourself on that?

Mr. Robertson: I don't know. He is raising a new point. I think he ought to come up here with grounds of defense or a fair statement of the grounds of defense. I think that should be adequate.

Mr. Pollard: That is what would like to do. We don't want them taken as admitting—

Mr. Robertson: It is not a complaint. It is a notice of motion for judgment. I think we are entitled to know what you admit, what you deny, and what your grounds of defense are. I file them every day. That is what I put in them.

Mr. Pollard: We have got this problem, the new rules specify that in the notice of motion for judgment shall set out in numbered paragraphs the grounds on which the plain-

tiff relies, or facts on which it relies for the claim for relief. This is not in numbered paragraphs. That runs five pages. It is just the most difficult thing in the world to go through there—

The Court: Couldn't you say the first paragraph on Page 2—

page 182 } The Court: The second paragraph on Page 2?

Mr. Robertson: I do it that way all of the time.

Mr. Pollard: In other words, you think the new rules require that we admit or deny the allegations in the bill of complaint, even though we had completed our pleadings before the new rules became effective?

The Court: I haven't had opportunity to pass on that since the new rules went into effect.

Mr. Robertson: I don't think it is necessary to pass on it at this time. If you come up here in good faith and give a garden variety of grounds of defense, which is a fair statement of grounds of defense, I think that is adequate under any of the rules.

Mr. Mullen: Will you stipulate that?

Mr. Robertson: If there is just going to be a difference on what a fair statement of grounds of defense is, if you come up here, don't quibble, I will tell you whether they are satisfactory or not.

The Court: If you don't think it is a fair statement, of course you can apply to the Court.

Mr. Robertson: I don't think we would get any where now on what is a fair statement.

Mr. Mullen: If we come up here with a ground of defense, you say it is not fair, the Judge so rules, we will have opportunity to come in.

page 183 } The Court: That will be in the discretion of the Court, as I understand.

Mr. Mullen: Yes.

Col. Harris: There is no stipulation?

Mr. Robertson: No, sir.

Mr. Pollard: In that connection, getting back to the question Mr. Robertson originally brought up about whether we would ask him to consolidate, it is not clear under the new rules whether or not we have the opportunity of filing counterclaim or cross claim in this suit. Of course, after he files it, it is up to the Court to determine whether or not we have a separate trial on it. And there is something in the rules that indicates it may be necessary to bring a separate suit; to protect ourselves against any question, any statute of limitations, we filed the suit prior to the expiration of one year.

We would be perfectly willing to take a non-suit, I would recommend it, I will put it that way, to take a non-suit in the separate suit we have filed in this Court and come in by way of cross claim or counter claim at the time we file our grounds of defense, without bringing in any new parties.

Mr. Robertson: I will not agree to that. I don't think they have the right to do it. I will oppose it and want to be heard on it, if they seriously press any such suggestion.

The Court: I don't think I would take the non-suit until you knew how the Court was going to act on the page 184 } cross claim. What about the time for filing cross claim?

Mr. Pollard: Under the old rules, there was no time limit. That is one of our problems. Under the new rules, the new rules say you can file your cross claim and your counter claim in the same paper with your grounds of defense.

The Court: You have to do that within so many days, don't you, under the new rules?

Mr. Moore: It is 21 days.

Mr. Pollard: I don't know whether you do or not.

Mr. Robertson: Here is another thing, the issues in that thing are entirely different. Among other things, they have filed exactly the same kind of suits, one up here and one down in United States Court. We are claiming you can't run both of them. There is no use trying to dispose of it here this afternoon.

The thing is, if they are going to seriously press it, I should think from a half day to a full day's time would be required to dispose of that.

The Court: I don't want to give you any encouragement about trying these suits together. I am not saying I won't grant the motion, and I am not saying I will. Offhand, it seems we have got enough problems as it is, in one case here.

Mr. Pollard: If our claim for liability arises page 185 } out of the same set of circumstances in Breathitt County, Kentucky, it would certainly be serving the ends of justice.

Mr. Robertson: Coming back to Paragraph 8, I admit I am wrong on that; Paragraph 9 states correctly the agreement of the parties. Now No. 10, that was the word "why".

The Court: I think that has been settled as to these interrogatories to the United Mine Workers.

Mr. Robertson: I think that disposes of that.

The Court: All right, gentlemen, it is a quarter to five.

Mr. Pollard: It is stipulated on the 24th there will be taken up the defendants' objections to the plaintiff's answers



to the defendants' interrogatories, and that in the next three days those objections will be served on the plaintiff in writing and filed with the Court.

. . . . .

page 2 }

. . . . .

Transcript of all the incidents of the above matter when heard in chambers on October 24, 1950, before Honorable Harold F. Snead.

Appearances: Mr. Geo. E. Allen, Sr., and Mr. T. Justin Moore, Jr., counsel as before noted;

Mr. James Mullen, Mr. Fred G. Pollard, and Mr. Yelverton Cowherd, counsel as before noted;

Others present: Mr. A. Hamilton Bryan, President Laburnum Construction Co., Col. Crampton Harris;

Mr. Willard Owens, of Washington, D. C.

page 5 }

. . . . .

Mr. Allen: May it please Your Honor, before we go any further into this matter may we note appearances here? I just don't know who represents whom today.

The Court: All right. The Minutes of the last hearing were just presented to me a few moments ago.

Note: Here are stated for the record the representations herein.

Mr. James Mullen, representing all the defendants.

Colonel Crampton Harris, representing all three of the defendants.

Mr. Yelverton Cowherd, representing District 50, United Mine Workers of America, and United Construction Workers. He does not represent the International Union, United Mine Workers of America.

Mr. Fred G. Pollard, who will be here, he is momentarily detained, he represents the three Unions.

This gentleman sitting over here, Willard Owens, is not appearing as counsel in the case, he is a mere spectator and has not entered an appearance and will not.

Mr. George E. Allen, representing plaintiffs.

Mr. T. Justin Moore, Jr., representing the plaintiffs.

Mr. A. Hamilton Bryan, President of Laburnum  
page 6 } Construction Corporation.

Colonel Harris: At your convenience I am prepared to hand Your Honor the Minutes. I have them with me, and they are my personal responsibility. When Your Honor has finished with them if you will communicate with me in some way I will arrange to be here and get them. They do not want the Minutes entrusted even to Registered Mail. They were not entrusted to the mail in coming down here, and Mr. Lewis said he would turn them over to me personally, and it was up to me to deliver them to the Court.

Mr. Allen: May I ask what Minutes they are?

Colonel Harris: Minutes of the Executive Board of the International Union, United Mine Workers of America, from October 28, 1948, up to the present time. I have not opened them. They are all tied up.

Mr. Allen: May it please Your Honor, before you open those Minutes there—

Colonel Harris: They are not to be opened before any of us. The agreement was that Mr. Robertson didn't care to see them, and the secrecy was to be preserved. The agreement being that the Judge would go over them himself, and then inform counsel as to which he thought if any  
page 7 } were pertinent, and Mr. Robertson stated, in fact he suggested, he stated that he would rely on the judgment of the Judge, and we have accepted the proposition under the statement that their secrecy would be preserved.

Mr. Allen: I had a conference with Mr. Robertson this morning, and I did not understand that any such agreement was entered into, and I might ask Mr. Bryan about that. You were there at the conference. I did not understand that any such agreement was entered into, and we should certainly like to say something on the subject of that procedure.

Mr. Mullen: It would seem to me that that is a little late. They have been delivered here under that agreement.

The Court: That was I believe toward the end of the former discussion, wasn't it?

Colonel Harris: Page 168, at the very bottom shows I made a statement which summarized it, and Your Honor answered me. It is the last line on Page 168.

The Court: I am of the opinion that Mr. Harris' statement is substantially correct, from my recollection. We will look at the record and see what it shows. You said Page 168?

Colonel Harris: At the very bottom. The last page 8 } line on the Page is where I make a statement, and Your Honor is telling us what to do.

The Court: "That means by no device and maneuvering or change of position or anything else does anybody get to see it if Your Honor has it. The Court: It will be private property. The agreement will be strictly complied with as far as the Court is concerned."

The purpose of exhibiting these Minutes to the Court, Mr. Allen, as I understand it is for the Court to go through the Minutes to determine whether or not there is anything that pertains in anyway to this case.

Mr. Allen: And that the Court is ruling without counsel knowing what the Court saw and what the Court is ruling on, and the Court's ruling will be final? Is that the status of the thing?

The Court: This is the result of Interrogatory No 125, in which the plaintiff asks that all of the Minutes of the Executive Board of the International Union, United Mine Workers, be furnished to the plaintiff. Copies of those minutes,—

Mr. Allen: Yes.

The Court: And as I understand it the Court is to look through these minutes to see whether or not there is anything pertinent to this particular case.

Mr. Allen: My question was—

page 9 } The Court: I may go a little further and state: That by pertinent it is meant anything that deals with directives to any of the agents ratifying or confirming any of the acts of any of the agents, if any. Is that correct, gentlemen?

Colonel Harris: Relative to the Laburnum Construction Company.

Mr. Allen: What is that?

Mr. Moore: If there was some overall policy in the region, Laburnum might not be specifically named. You can still go into that, can't we?

The Court: The question of agency.

Colonel Harris: There has been a difference of opinion, as I understand it, all along as to the extent of collateral matters the plaintiff was entitled to look at. And our opinion as to the limitations on what the plaintiff was entitled to see—I understand there has been a difference of opinion all along before I got into the case on that.

There is an earlier statement back before that where Mr. Robertson stated that he did not want to see them; that he was willing to rely on the judgment of the Court, and it was

on that statement that we met in Washington and page 10 } they decided to turn them over to the Judge.

Mr. Moore: Are you of the understanding that the Judge can only take into account the parts of those Minutes where Laburnum Construction Corporation is specifically named?

Colonel Harris: No, I don't feel that way. And, you correct me, Mr. Mullen, because you agreed, if I am wrong: I understood that the Judge was to look over those Minutes and decide which Minutes he thought we should furnish copies.

And at this point may I ask is it customary in Virginia where you have an original paper of importance to have it photostated and have the Court authorize the withdrawal of the original in substitution of the copy?

The Court: Yes.

Mr. Allen: Yes.

Colonel Harris: We should like to do that whenever the proper time comes to have Your Honor so rule. I didn't understand it was a limitation on what the Judge was going to do. There has been a disagreement among us. In other words, we have turned those papers over to the Judge at this time.

The Court: And the Court, if it thinks advisable, can order copies of all of the Minutes. That is, if in the judgment of the Court it has anything to do with this case, page 11. } of course.

Colonel Harris: Yes.

The Court: Is that your understanding, gentlemen?

Mr. Moore: Yes.

Colonel Harris: If the Court thinks none of them should be copied, then none of them will be.

The Court: Then the Court will not require that question to be answered.

Mr. Moore: So that the record may be complete: Could we not here note that we object and except to the Court not granting this question 125 of the Interrogatory No. 4, as originally offered by us? We want to offer our objection and have our point clear.

Mr. Mullen: At this point I haven't read the record.

Mr. Moore: We went through it.

Mr. Allen: There is a dragnet objection, but I don't think it will suffice. May I get a little clearer understanding of this matter, Your Honor, from the agreements which have been recorded there: The Court is going to clarify the situation by carefully going through all these Minutes, and the Court is going to determine which of them bear on the issues involved in this case, and which of them we are entitled to in-

roduce in evidence, and then the Court will have  
page 12 } those photostated, or will order copies of them, and  
they will be turned over to us, is that correct?

Colonel Harris: We didn't agree the Court was to photostat them. It would be a lot of trouble to the Court to do that, and in order to preserve their secrecy and integrity if the Court points out that it wants some photostated I personally would prefer to have the responsibility of having them photostated.

The Court: I don't see any objection to that.

Mr. Allen: That is all right.

The Court: I didn't understand that the Court would be finally ruling on whether or not they were admissible in evidence. The ruling of the Court would be as to whether or not any or all copies would be required to be furnished the plaintiff.

Mr. Allen: That is right.

The Court: And of course the Court reserves the right to reject any and all at the time of trial.

Colonel Harris: That was my understanding, Your Honor.

The Court: If any of you gentlemen have a different understanding I would like for you to state it.

Mr. Allen: I didn't mean you were to pass upon the admissibility at all. I used that word inadvisedly.

Mr. Bryan: I am not appearing in this case at  
page 13 } all as counsel, and it may be a little unusual—

Mr. Allen: We ask permission that Mr. Bryan may assist us in the absence of Mr. Robertson this morning, not as counsel but from his own knowledge of the situation, and that he may not be required to enter his name here as counsel in order to have something to say to help us this morning along.

The Court: Any objection to that, gentlemen?

Mr. Mullen: No objection.

The Court: Then that seems to be perfectly all right.

Mr. Bryan: I didn't want to do anything which might jeopardize my position as a witness later on, which would cause any one to say I had disqualified myself, because if that is the case I just can't say anything.

The Court: Is it stipulated then that Mr. Bryan will not be disqualified as a witness by reason of the fact that he is assisting today in this hearing? Then it is so stipulated.

Mr. Bryan: Before we proceed any further in connection with these Minutes: I would like to point out why we think they are important to our case, and why we think that we are entitled to them without restrictions.

page 14 } We have what we believe to be a copy of the Constitution of the United Mine Workers of America, International Union. Article XX of that Constitution reads as follows, Section 1.

“District 50, United Mine Workers of America, subject to the jurisdiction and regulation of the International Executive Board, is hereby created and set up under authority of the International Union and may adopt by-laws and rules not inconsistent with this Union.”

We have information which we believe to be correct that District 50 was organized in about 1936. Prior to that time we think that Mr. John L. Lewis and the United Mine Workers were part of the American Federation of Labor.

Around 1936 some difference or trouble arose and those Unions separated, and District 50 was organized by the United Mine Workers of America, not for the purpose of organizing coal miners, and the production of coal, but for the purpose of organizing people engaged in chemical companies, like Solvay, duPont, any of those big companies, and all other industries not directly connected with coal mining.

It was organized in a way to compete with the American Federation of Labor, and afterwards the C. I. O.  
page 15 } in organizing various workers who were not organized. After that it appears that United Construction Workers was organized as a division of District 50. The exact distinction between those two organizations we haven't been able to find out as yet.

We also have what we believe to be the rules of District 50, Article I of those rules provides:

“This organization shall be known as District 50, United Mine Workers of America, and shall work under and be subject to the constitution of the International Union as provided in Article XX thereof.”

In other words it ties right back again to the International Executive Board, which the Constitution of the Union, International Union, said should have jurisdiction over and should regulate District 50.

We also have the rules of United Construction Workers. Rules of United Construction Workers provide that it shall be operated under the authority of the Certificate of Affiliation granted by the United Mine Workers of America. Article XVI, Section 3, of those rules provide that all policies pertaining to the administration and the government of the

United Construction Workers shall be determined by the National Director, and his rulings shall be binding un-  
page 16 } less changed by the International Executive Board.

In the Notice of Motion for Judgment it was alleged that United Construction Workers in District 50 are simply agents of United Mine Workers of America carrying out the policies of United Mine Workers of America, that is to organize labor.

In 1941 there was a reorganization of District 50. At that time, in Volume 52, No. 16, published under date of August 15, 1941, there was an article stating that:

"The International Executive Board of the United Mine Workers of America has laid out a program for the further expansion and organization work of District 50, and changes affecting the District Personnel will be made in official effect on August 1."

It is our belief that there are numerous resolutions and other things pertaining to the management and the regulation of District 50 in United Construction Workers, which appear in these Minutes. If we are correct in our belief we believe that we are entitled to see them. They are very germane, pertinent. Will prove in a large way, if not completely, the allegations of agency which we have made, and which will result we believe in the United Mine Workers of America as a matter of law being liable for the acts alleged of District 50 United Construction Workers in Breathitt County, Kentucky.

We would like to renew our motion that we be  
page 17 } permitted to see those Minutes. We don't believe it is a fair thing to impose upon the Court to go through those Minutes for anything that might pertain to District 50, we think we would like to see them.

Mr. Allen: I don't know in what order we are supposed to present this matter. I wanted Mr. Bryan to say what he had to say as enlightenment for the Court.

The Court: I thought this matter was determined at the last meeting.

Mr. Allen: Let me approach it from a little different angle, Your Honor. Let us suppose it was. I believe we would have a right, and probably Your Honor would want us to bring to your attention, matters which we think you should bear in mind in going over those Minutes, and in order to determine what we are entitled to, and what you eventually will have to decide we are entitled to.

The Court: I would like to have that information.



Mr. Allen: Let me start with this proposition, that a lot has been said here about principles of agency, and the question of principal and agents being involved here, which is very true. But this matter should be approached, and in reading those Minutes I think it should be borne in mind that the principles applicable in this case go even beyond page 18 } that.

For instance this is a tort, and it is not an ordinary agent who is being charged with a tort. It is a group which we submit constitutes part and parcel of the United Mine Workers of America.

Now in a situation of that kind the tort law applicable is that anyone who encourages, even encourages, doesn't even have to instigate, if he, as the Virginia cases say, by word, acts or signs encourages another to commit a tort, he is liable as principal.

You have here, and I ask Your Honor when you go through those Minutes, to remember this: Mr. Bryan has hit the question squarely, so to speak, but not quite fully. You will find upon reading those three books here that the United Mine Workers of America is composed of various and sundry districts, all over the United States, and in Canada.

They are ordinary districts. They are numbered not consecutively, you might say from one up to the thirties, but just numbered at random. They are, you might say, the ordinary districts that have powers of local groups, but when this District 50 was organized, that is the last district that was organized, it was organized by the United Mine Workers of America on an entirely different basis for an entirely different purpose, and its jurisdiction both geographi-

page 19 } cally and industrially is coextensive with the jurisdiction of the United Mine Workers itself. And it was organized for the purpose, after competing with the American Federation of Labor, and the C. I. O. in the industrialization of workers, after John Lewis had his break with the American Federation of Labor, and the C. I. O.

It is purely an organizing body, and its representatives; it is part and parcel of the United Mine Workers of America itself.

Now that District 50 is composed of various and sundry regions. The offices of District 50 is in the United Mine Workers Building in Washington in the very same room, same building, same place where the United Mine Workers have their offices—

Mr. Mullen: Is there any evidence before the Court to argue the case on at this time?

Mr. Allen: All that will appear, I think, from these documents here.

Mr. Mullen: It doesn't appear from that.

Mr. Allen: Every bit of it will become clear. And we find that District 50, I say, is divided into many regions with offices in the numerous cities all over the United States. For instance, Region 58, at Pikeville, Kentucky, is the region where this cause of action arose. A man named David  
page 20 } Hunter there is Regional Director. Region 19 is  
here in Richmond, a man named Robert Folds is  
Regional Director.

The United Construction Workers is simply a division of District 50. And you will find not only in these books here, but we think you will find in those Minutes reference after reference to the effect that District 50 is affiliated with the United Mine Workers.

United Construction Workers, affiliated with the United Mine Workers. And you will find the term affiliated described in the books as being a part of, united with, allied with, working in alliance with.

Now if you bear in mind in reading those Minutes the principles of tort law which holds that any encouragement makes the party doing the encouraging liable, and that any group which is a branch of the main body, the actions of that group, makes the main body responsible.

You take these books here, and Mr. Bryan didn't go into them quite fully enough, but I have the rules here of District 50 of United Mine Workers of America.

"This organization shall be known as District 50, United Mine Workers of America."

You find the Administrative Officer operating under authority of Article XX of the Constitution of the International Union, which we have here, shall have general and  
page 21 } complete supervision over and administration of  
the affairs of District 50.

You will find "unless otherwise directed by the Administrative Officer of District, or International Executive Board"—It goes on to say the District shall receive and receipt for all monies and so forth. The Secretary-Treasurer and all aids and assistants to handle funds of the District shall give bond for the faithful performance of their respective duties in such sums as may be fixed by the International Executive Board.

On Page 8, I am reading still from the rules of District 50: "All local unions must be chartered by, and shall be under

the jurisdiction of, and be subject to the laws of the International Union. The Administrative Officer shall have authority to designate an officer to administer the affairs of any local union when it is found to be within the best interest of the local union to do so. Charter territories may be issued to handle all union affairs, affairs that shall be charged in accordance with provisions of the Constitution of the International Union, United Mine Workers of America. Charters may be issued only by authority of the Administrative Officer, local union shall be composed of 10 or more members engaged in occupations within the jurisdiction of the District."

Now, that is District 50.

page 22 } Mr Mullen: Now, if Your Honor please, we have been all over this time and time again. It has been repeatedly stated by us District 50 is a District of United Mine Workers; that United Construction Workers are affiliated with United Mine Workers. We have been over this whole thing before. The question here now is as to those Minutes.

We have a definite agreement made with counsel before the Court, and sanctioned by the Court, and those Minutes have been delivered here under that agreement.

Mr. Allen: I am not trying to get away from the agreement. I am asking the Court to bear certain things in mind when going through the Minutes to determine what we are entitled to have.

Mr. Mullen: I think you are trying to argue the case before there is any evidence before the Court.

Mr. Allen: You admit, then, District 50 is a part of United Mine Workers?

Mr. Mullen: As I said once before, anybody who can read English can see that District 50 is a District of United Mine Workers. It is specifically stated in its Constitution, and in the rules of District 50. We have said it again and again and again.

Mr. Allen: To which the principles of agency page 23 } would apply?

Mr. Mullen: I haven't said anything about the law. There is no question about that. No, we don't think so.

Mr. Allen: You don't mean then that District 50 is an agent of United Mine Workers?

Mr. Mullen: Not anything like that. I am not admitting anything whatsoever.

Mr. Allen: That is why I think it is important that these things should be borne in mind.

The Court: How would it be for you gentlemen, Mr. Allen, and your associate to furnish the Court with a memorandum

of what you think the Court should take into consideration in viewing these Minutes?

Mr. Allen: I think that would be a good idea.

The Court: That would save time and furnish counsel for the defendants a copy of that.

Colonel Harris: I have a number of papers of excerpts from the Digest on Admissibility of Evidence in Virginia, and we would be glad to give you a little statement of how we think Your Honor should limit it to the applicable rules of evidence.

The Court: And furnish counsel with a copy of it. It seems to me that would perhaps save time, and the Court would like to have the views of counsel for both sides on this subject.

page 24 } Mr. Pollard: If Your Honor please, we renew our objection at this time that this particular Interrogatory asking for the Minutes of the meetings does not meet the requirements of Section 8324 of the Code.

Mr. Moore: Is that the Section of Interrogatories—

Mr. Pollard: It is part of the Section of Interrogatories.

The Court: It is my recollection that objection is in the Minutes? Is that true?

Mr. Pollard: Did you overrule it?

The Court: I reserved, I think, my ruling on that. I haven't stated at this point whether I am going to require the defendant to answer a question there numbered 125 or not.

Mr. Allen: All right.

Mr. Pollard: Then we also renew our objection that none of the questions in any of the Interrogatories which require the defendant to produce—Any of the defendants to produce documents meets the requirements of Section 8 through 24, which you overruled.

The Court: Overruled.

Mr. Pollard: And we except.

Mr. Bryan: We were with Mr. Robertson all morning, and based on our talk with him I don't believe that his recollection of any agreement made up here last time is  
page 25 } exactly the same as Colonel Harris or Mr. Mullen have stated it to be.

The plaintiff is very anxious to preserve its right to call for those Minutes, not only during the period from October 28, 1948, to August 4, 1949, but all Minutes of the International Executive Board from the date of the formation of District 50. That is what we would like to see.

Any kind of an agreement that they think we are under to the contrary, we would like to be relieved of it. We want to call for the—

Mr. Mullen: We certainly will not relieve counsel of an agreement entered into in the Presence of the Court and sanctioned by the Court, and we have represented to our clients what that agreement was. It is there in writing.

These Minutes will serve the purpose as covered by the agreement, they were entrusted to the care of Colonel Harris to be brought down here to the Court pursuant to that agreement, and we are very much surprised that counsel now takes the position that it having gotten the Minutes here can get out of that agreement. That is what your position amounts to.

Mr. Allen: May I say this at this time—

Mr. Bryan: I wanted to bring that question up page 26 } before proceeding further.

The Court: Have you gentlemen read the Minutes of the last meeting?

Mr. Allen: I have not, but even if it be true that that agreement was entered into, I don't see any reason in law or equity why if we think that Mr. Robertson entered into it, maybe inadvertently, from what he said to us this morning, he didn't consider that he had entered into such an agreement.

But let's assume that he had: We have a right to come here and ask Your Honor to permit us to withdraw from the agreement. I have asked the Court of Appeals to permit me to withdraw from an agreement there, and they did allow me. Therefore I don't see why I can't ask this Court to permit me to withdraw from an agreement, since no one's position has been made any worse by it.

And if Your Honor should grant that motion, they would be entitled to their Minutes back, and let the gentlemen take them right back to Washington. Then you could pass on the question as to whether we are entitled to them. But at any rate we would like to file a written memorandum setting forth the matters that we think you, Your Honor, should bear in mind in determining which of those Minutes we are entitled to see, and we should like to also file a memorandum asking permission to withdraw from the agreement, if an  
page 27 } agreement was made as the Minutes indicated was.

We don't see where these gentlemen have been put in any worse position by it. They have brought the Minutes down here, and they can take them back without they being opened, if we got them to bring them down here on the faith of that agreement. Then we can proceed anew and determine whether we are entitled to the Minutes or not. It is perfectly apparent that the United Mine Workers of America run the whole show, so to speak, and that these Minutes will show that they run the whole show.

Mr. Bryan: I have before me a copy of a Resolution passed by the International Convention in its session in October of 1948. This is just a sample, I believe, of some of the things that will appear in those minutes.

"Whereas for some years District 50 has been an integral part of our great organization with an office staff that is efficient and energetic, they leave no stone unturned to bring under the banner of this branch of the UMWA thousands of unorganized men and women in our Nation. And whereas were it not for this branch of our union many who are now enjoying the benefits of working under a contract would have never heard the story of collective bargaining, and what it means to the men and women who toil. Therefore, page 28 } be it resolved, that we commend the able officials of

District 50 for their past untiring efforts, for their splendid victories, their unity of purpose to never rest on past victories, but to press forward ever diligent until the last man and woman who toils in our Nation has learned of the many good things of life that can come to them by associating themselves with a trade union.

"And be it further resolved that our great Parent Body through its responsible and efficient officers continue to lend every moral and financial support to District 50, that the coming generations may reap a harvest of increased wages, shorter hours, and enjoy more of the better things of life. That the officers of this fine District may be able to continue their ceaseless efforts to make the luxuries cherished by our people a reality."

How many more resolutions like that appear in the Minutes of International Executive Board we don't know, but—

Mr. Mullen: What does that prove?

Mr. Bryan: I think it definitely shows District 50 is constituted an agent of United Mine Workers of America.

Mr. Mullen: We have said again and again and page 29 } again that District 50 is a District of United Mine Workers.

The Court: Yes.

Mr. Bryan: But you do deny the agency, Mr. Mullen.

Mr. Mullen: It is a part of United Mine Workers. District.

Mr. Allen: And if District 50 is a part of United Mine Workers, then we are entitled to see the relation, and the Minutes showing the relation to District 50 are admissible in evidence here.

Mr. Mullen: You are not entitled to anything except that

you can show is pertinent, otherwise it is a fishing expedition, and you have no right to the papers themselves. You have to file an affidavit showing what is pertinent, and how it is pertinent. That is provided for by the Code.

It was fully argued by me here at the last hearing. So I won't go into the details of it again at this point, but you cannot call for all the books of either a corporation or an unincorporated organization and get them in that fashion.

Colonel Harris: If the Court pleases: We made a solemn agreement in open Court, and the Court approved of it. Now he says he does not know of anything that we have done in opposition to that, but he has changed his position. This isn't a question of an estoppel. This is a question page 30 } of an agreement made in open Court.

I could tell him many various things that we might have done, but on the suggestion of Mr. Robertson this method was used, and we agreed to it. We didn't suggest it. We say that counsel can't at this time ask us successively, or ask the Court, to release them of an agreement solemnly made.

You will find a statement there by Mr. Robertson that he didn't even want to see the Minutes himself.

The Court: Suppose we read several pages of the Minutes. You gentlemen say you haven't read them, and neither have I, as a matter of fact. It might refresh our memory if we did that at this time. Let's start on Page 161 and read.

Note: At this point the Court reads aloud to counsel present at length from the transcript of the former hearing.

The Court: That is the story, gentlemen.

Mr. Allen: I do not see where Mr. Robertson has waived his right to insist upon an answer to Interrogatory 125. That is held open. And 125 calls for these Minutes.

page 31 } Note: The Court now examines a paper writing handed to the Court by Mr. Bryan.

Mr. Bryan: I don't think Mr. Robertson intended to waive by consent all further rights to ask for these Minutes, or other Minutes.

Mr. Mullen: There is nothing ambiguous in the record on that point at all. The matter was left to the Judge to go through and determine if any part was necessary, or pertinent, to this case, and if so he would require it be furnished.

Mr. Robertson agreed to it definitely. I am very much surprised that you now want to go back on that agreement.



Note: We further pause while the Court further reads this paper writing handed to him by Mr. Bryan.

Mr. Mullen: We don't understand you are offering that Order at this time. Is that correct?

Colonel Harris: I assume we will have a chance to check their Order. And if we have any suggestions we can submit them to them?

The Court: I would think so. This is the first page 32 } time you have seen the Order?

Colonel Harris: Yes, sir.

Mr. Moore: We just went through all the Interrogatories and tried as best we could to consolidate the Court's ruling on all of them in a logical order so you could easily see what parts were given and refused and modified and what not. That is all that there is in there, and it is just the part about the Interrogatories.

Mr. Pollard: I think it is better to have a written—

Mr. Mullen: We are up there today to take up Interrogatories and object to the Answers to those that we filed to you. That is our purpose here today mainly. We would like to get on with that.

Colonel Harris: Your Honor will notice there that that statement of mine, beginning at Page 168, where I looked down the road and tried to envision the possibilities, and I used the express words "any device, maneuvering, change of position, or anything else."

Now that was as broad as my mind was capable of making it. That was my understanding of what we had agreed to, and to ask something else seems to be right in the face of the plain agreement. To come in now and say they want to withdraw that stipulation, I don't understand that people can enter into a solemn agreement and then with—  
page 33 } draw from it.

The Court: The Court was of the opinion that that was the agreement, and the question now is, as I see it, whether or not to entertain the motion to relieve the parties of this agreement.

As I read the record it reads that the agreement was as stated. Do you gentlemen differ with the Court from the standpoint of the record?

Mr. Allen: I don't quite understand what effect that agreement has upon our Interrogatory No. 125. It seems that the answer to that is left in abeyance for the time being, but it doesn't seem that we have waived our right completely to an answer to that Interrogatory.

Colonel Harris: I understood you agreed to leave it to the judgment of the Court.

The Court: That was my understanding. The Court reserved its decision on 125, and after the Court looked at the Minutes, and the Court then being of the opinion that copies ought to be furnished then the same will be ordered.

If it is of opinion none should be furnished, that would be the Order of the Court. It may be that after looking through the Minutes the Court might order all of them to be furnished. It was a plan to be helpful to the Court in determining whether or not to grant question 125 to United page 34 } Mine Workers of America as written.

Mr. Mullen: That is the way I understood.

The Court: That is right, is it not, gentlemen?

Mr. Bryan: After listening to the statement in the record, it would appear that is what Mr. Robertson said. But it also appears that the Court reserved any final ruling on that Interrogatory, and I didn't think that the plaintiff had finally and fully waived all its rights to request that those Minutes be produced.

When we saw the Minutes here today we thought that before proceeding any further we better get that matter straight before the things are opened. We again think that material information is contained in those Minutes, as well as in Minutes of the meeting of the International Executive Board held prior to that time.

In fact, ever since District 50 was organized.

The Court: Maybe the Court will rule with you, but the Court hasn't ruled on that question as yet.

Mr. Bryan: We didn't want to be in the position of having anyone think that because these Minutes came down here and were opened that we had lost all our rights to forever after asking to see the Minutes.

Mr. Mullen: My understanding was that they were brought to help the Court to determine its ruling on that question, and after the Court had examined them it would page 35 } rule whether all or none or a part of those Minutes should be furnished, and that would be the Court's ruling, and either side then would have a right to except. That is what I understood the situation to be.

Note: Here ensues an off the record discussion by request.

Mr. Allen: I wonder if you would let Mr. Bryan, Mr. Moore and myself have a little conference for a minute?

The Court: Yes. We will recess for five minutes.

Note: At this time a five minutes recess is had, following which the matter is further discussed, as follows:

The Court: All right, gentlemen. After the conference do you gentlemen have anything further to say?

Mr. Allen: If Your Honor please, I have conferred with these gentlemen here, and we are willing to go along with the understanding, which Your Honor has expressed here, but inasmuch as Your Honor is going to examine the Minutes we think it is vitally important that you examine all page 36 } of the Minutes from the organization of District 50 showing the organization and management of District 50, and examine them just like you examined these, and under the same circumstances and same restrictions.

Also, subject to no change by any device, change of agreement or whatnot.

Colonel Harris: That is not in the question. Question 125 starts off with October 28, 1948.

Mr. Allen: You didn't let me get through.

Colonel Harris: Then pardon me.

Mr. Allen: I was going to ask for leave to amend the question to go back to the date of the organization of District 50.

Colonel Harris: Now are you through?

Mr. Allen: Yes.

Colonel Harris: Judge, I suppose you have other duties to perform, and other cases to handle, and I assume that you don't want to devote all of your time to going back and reading Minutes that can't possibly have any bearing on Laburnum Construction Company.

We believe when you read all those Minutes you will know far more about how you intend to rule than you can possibly know today. It seems to me that at this time to carry out the agreement we made on which we brought the Minutes into this jurisdiction, there is nothing left for either page 37 } side. We can't do anything but live up to our agreements as members of the Bar. There is no alternative left for us.

Mr. Allen: I was asking leave to amend the question. That didn't have anything to do with the agreement.

Mr. Cowherd: I think that that in itself is the very essence of the agreement. I am a little bit older than 20, and I have been around quite a bit over the United States, and this is the most unusual request I have ever heard in a law case.

I have always been able to feel secure in any agreement I ever made in Court, and counsel for the other side have never even proposed such an idea as this.

Mr. Allen: Wouldn't we have a right to file another Interrogatory asking for other Minutes?

Mr. Cowherd: I suppose you have had 7 or 8 now, so you would have some more. The way this matter is shaping up we will have nothing to do but run back and forth. We have other business that needs attention as well as this case.

Mr. Mullen: If we have to answer Interrogatories by November 15, we just can't keep on getting them. We have been delayed today because you have taken up time on page 38 } these other matters. We were here to submit objections to the last Interrogatories, so we could get into position to answer them on November 15.

So far as this request is concerned I think it is unreasonable. District 50 was formed back in 1935, and it would have a vast amount of reading to do, and, further, this is purely a fishing expedition.

Those Minutes have nothing to do with what was done, said or happened in Breathitt County in 1949.

Mr. Bryan: What Mr. Mullen has said, Your Honor, strikes the nail on the head. He keeps referring to the phrase about Breathitt County in 1949. They would like to have this inquiry just limited to Laburnum Construction Corporation and Breathitt County over a week end in July, 1949.

We feel that our efforts to prove the relationship of agency which existed between the International Union, which is a parent organization, and the affiliates or branches, District 50, and United Construction Workers, we can show the connection by showing the dealings and course of conduct between these organizations over a period of time.

The inquiry should not just be limited to one locality over a little short space of time. It is not what happened in Region 58. Anything that is in those Minutes that page 39 } pertain to District 50, to the management of District 50, or United Construction Workers, or the conduct of its affairs, we think is pertinent.

The Constitution of the United Mine Workers of America says, as I stated, District 50 shall be subject to the jurisdiction and the regulation of the International Executive Board of United Mine Workers of America.

The Court: The Court will overrule the motion to grant leave to amend.

If you gentlemen wish to offer another Interrogatory the Court will pass on that at the proper time.

The Court: We had several Interrogatories we didn't pass on.

Mr. Allen: 11, 12 and 13, weren't they?

The Court: No, Mr. Robertson presented some new Interrogatories.

page 41 } Colonel Harris: 14, 15 and 16 were the numbers in pencil on the top of mine.

Mr. Mullen: No, this is some further Interrogatory presented to United Mine Workers.

Mr. Bryan: He has numbered these for convenience 11, 12 and 13.

The Court: The originals are probably in the papers.

Mr. Bryan: That Order which you have a copy of undertakes to give numbers to all these different Interrogatories.

The Court: Further Interrogatories—(Starting off to read something to himself)—is this the copy?

Mr. Cowherd: Ones submitted to us were 14, 15 and 16. I don't know if it was marked that way for convenience or confusion.

Mr. Mullen: Here are the objections we are going to make to them (handing counsel a paper writing).

The Court: Before we leave the Minutes of the Executive Committee of the United Mine Workers: It is understood that you gentlemen, counsel for the plaintiff, are going to furnish the Court with a memorandum of points that you think the Court should take into consideration in viewing these Minutes.

Mr. Allen: Yes, sir.

page 42 } The Court: And it is further understood that counsel for the defendants will furnish the Court a memorandum of authorities showing the limitations, and both sides will furnish the other side copy of the respective memorandum.

Mr. Allen: Yes.

The Court: Is that understood, gentlemen?

Mr. Bryan: Also understood we reserve the right to request that the defendants furnish copies of the Minutes prior to October 28, 1948.

Colonel Harris: The Court ruled on that already.

Mr. Bryan: I thought he ruled couldn't amend the question.

Colonel Harris: But if you want to file another Interrogatory, the Court will pass on that later.

The Court: I will pass on that point if and when further Interrogatories are filed.

Mr. Mullen: Now, if Your Honor please—

The Court: Which one first?

Mr. Mullen: United Mine Workers. There was served on us further Interrogatories on October 12, 1950. We object to Question 5.

Mr. Allen: What was that? Please orient me so I will know what you have there.

Mr. Mullen: What did you say?

page 43 } Mr. Allen: I wanted to see which Interrogatory you wanted to discuss. Read the first line on the first question, so I will know that I have the right one.

The Court. Yes.

Mr. Allen: Just what was that?

Mr. Mullen: Qestion 5, the first question we object to. Here is the question: "With respect to the work which was being performed by Link Belt Company of Chicago, Illinois, for Inland Steel Company, at Priceville, Kentucky, or Wheelright, Kentucky, during the year 1949, did Thomas Raney as an official of United Mine Workers of America, or in any other capacity attend certain meetings held between representatives of United Construction Workers, affiliated with United Mine Workers of America, (hereinafter sometimes called United Construction Workers) or representatives of the District 50 United Mine Workers of America, (hereinafter sometimes called Distrct 50) and representatives of Link Belt Company during the months of May, June or July of 1949, for the purpose of negotiating an agreement by which Link Belt Company would recognize United Construction Workers or District 50 as the collective bargaining agent for some or all of the employees of Link Belt Company on

page 44 } said work at Priceville, Kentucky, or Wheelright, Kentucky, and in this connection did Thomas

Raney as an official of United Mine Workers of America, or in any other capacity, participate in any manner in negotiations with Link Belt Company? What meetings between representatives of United Construction Workers or District 50, and representative of Link Belt Company did Thomas Raney attend, and to what extent did he participate in the negotiations carried on with Link Belt Company?"

Now, we object to that as it calls for testimony that is immaterial, irrelevant and incompetent. It has to do with transactions *res ipsa loquitur*, and that it calls for testimony that will throw no light on the issue in this case, and the matters inquired about in this Interrogatory relative to Thomas Raney would shed no light on the actions or statement of Thomas Raney in any connection with any business or claims of the plaintiff Laburnum Construction Company.

The Interrogatory calls for testimony which on the surface would only serve to confuse the jury, and it is pro-

pounded for the purpose of creating prejudice against this defendant.

Now, it is entirely a separate company, has nothing to do with Laburnum Corporation, we don't know any-  
page 45 } thing about any of the circumstances under which  
they were working, or anything about their deal-  
ings with any Union.

We cannot see how it can possibly have any bearing whatsoever on this case, or that it is relevant testimony in this case.

Mr. Bryan: Are you through?

Mr. Mullen: Yes.

Mr. Bryan: Your Honor, we expect the evidence to show that during the first part of July, 1949, Mr. William O. Hart, who is a representative of United Construction Workers in District 50, United Mine Workers of America, called us over the telephone, called the plaintiff over the telephone, in Richmond, he was in Pikeville, Kentucky, and said that it would be necessary for the plaintiff to enter into an agreement recognizing United Construction Workers as the sole collective bargaining agent for the employees of the plaintiff on the work for Pond Creek Pocahontas Company in Breathitt County, Kentucky.

Mr. Hart said that they had recently broken up work and run employees off of the job in Wheelright, Kentucky for Inland Steel Company. That is, employees of Link Belt Company and Becker Construction Company. We expect to have testimony which will show that. We further expect to show,  
and are advised, that after this Link Belt Company  
page 46 } entered into an agreement with United Construction Workers recognizing that Union as collective bargaining agent for employees of Link Belt.

In connection with negotiating that agreement it appears that Thomas Raney, who is a member of the International Executive Board of United Mine Workers of America participated in the negotiations with Link Belt.

We believe that that establishes or shows that United Mine Workers of America and United Construction Workers are in an agency relationship, United Mine Workers backstanding United Construction Workers through its International Representative Mr. Raney.

Therefore, United Mine Workers of America participates in connection with the negotiations between United Construction Workers and people like Link Belt, or Becker Construction Company, or could be Laburnum, if Laburnum had entered into an agreement with United Construction Workers.



That is the purpose of the question. We think it is relevant, it calls for pertinent evidence.

Mr. Moore: I would like to say one thing about this to you, Your Honor, if that is all right, at this time:

It brings up the question of proof of other acts, page 47 } which may on their face seem to be irrelevant. But, as you well know, Your Honor, under the law of evidence, which of course is in this case governed by Virginia Law, proof of past acts in similar instances is perfectly admissible when it goes to show a general scheme or a general pattern, and an overall picture.

Because then it tends to prove the particular act under question. We have authorities which we would be glad to quote to show if there is any doubt in your mind on that point. We believe this is perfectly pertinent to show this general plan that the defendants were using here in Kentucky.

We think that it should be allowed on that basis, as well as the agency basis.

The Court: I will allow the question, and of course I will reserve the right to refuse to admit it into evidence at the proper time.

Mr. Mullen: We note the exception.

Mr. Mullen: Next we object to Question 6, furnish a copy of each of ..... Journal.

Then they call for some 38 different issues of the publication of United Mine Workers Journal, and the furnishing of those can simply serve to only confuse the jury, as counsel will show you, it is a design also to prejudice page 48 } the jury against the defendant for the reason that the issues of the United Mine Workers Journal contain various and sundry expressions of opinion, and discussions of economic, social and political questions, which would tend to arouse debate and disagreement on the part of the members of the jury, who hold principles contrary to the principles expressed or positions taken, in said Journal, and possibly could arouse a feeling in such jury or prejudice against the said defendants. Said Interrogatory calls for testimony that would unduly burden the record in this case, and the requirement of Section 8-324 Code of Virginia of 1950, have not been met with in respect to this Interrogatory.

This Journal is a paper setting forth the view and so forth of the United Mine Workers. It contains criticism of laws proposed to be passed which they believe somewhat designed against labor. Such, in late years, as the Taft-Hartley Act. It tends to bring about discussions as to the acts of members which criticised throughout the country in connec-

tion with strikes and so forth, all of those things would go to prejudice the Jury.

Now it is just the same as if you were asked the hand to the jury a series of copies of the Times Dispatch and the News Leader, which in turn criticised the United Mine Workers in the case of strikes, criticising John Lewis in attempting to negotiate contracts, it attacks the Wagner Act, and similar things. All of it would simply prejudice the jury.

I want to ask Your Honor what would be the chances of a defendant before a Virginia jury with something like that before them (now handing to the Court a paper writing, or pamphlet).

These are partisan papers. If they can point out any item that has a bearing on this case, that is all so well and good. But 38 issues of a newspaper that contained all of these criticisms, that expresses opinions that may be contrary to every one of the opinions of the jury, it can have nothing and no effect whatever except prejudice the jury.

I have read a number of these. I have the whole bunch here. I have read them. Those I read didn't have a word in them that could have any reference or bearing to this. If they have any particular Article that they want to call for, and can point out as having any bearing or anything to do with the case, that is one question. But to put these issues of these papers before the jury will not only confuse the jury, it would prejudice the jury, and certainly they have no right to put those before them anymore than we would have a right to put the papers of the Times-Dispatch or the News Leader into evidence, any of those things, in a case where they were concerned with the other side.

Mr. Allen: If Your Honor please, may I say this: The question simply provides "furnish a copy of each of the following issues or United Mine Workers Journal."

There is not one word said about introducing the copies into evidence, and of course that will be a matter entirely within Your Honor's discretion and ruling, and the only certain things about it is that they would be inspected to see what parts are material. There are only certain things in those Journals that we will even ask be read to the jury, and that will be considered evidence when read to the jury.

The Journal is the official organ of the defendants, or the defendant United Mine Workers. And anything that that Journal contains with reference to the admission, or evidence that we consider proof of some of the things we allege, is certainly evidence in the case.

It is their official organ. It is their official document over their own signature. Now we won't offer any evidence except what is pertinent, we won't offer any inflammatory Articles as Mr. Mullen has referred to here. Your Honor would pass on the particular portions of those Journals which would be admissible in evidence, and would read both page 51 } portions to the jury, and that is all there would be to it.

Mr. Mullen: Haven't you copies of all of these that you called for?

Mr. Allen: I don't think that we have.

Mr. Ryan: I have one in my hand here, designated Volume 52, No. 16, dated August 15, 1941, at the top of the page No. 2, I might say Page 2 and every other issue of the United Mine Workers Journal that we have ever seen contains an official roster of the United Mine Workers of America, showing the president, vice-president, secretary-treasurer, all the members of the United, or all the members of the International Executive Board, and a District President and a District Secretary-Treasurers.

At the bottom it says "United Mine Workers Journal, Official Publication United Mine Workers of America. Published on the 1st and 15th of each month by the International Executive Board of United Mine Workers of America. John L. Lewis, International President. Philip Murray, International Vice-President. Thomas Kenny, International Secretary-Treasurer. Ellis Sills, Editor. Publication Office 912-918 Burlington Avenue, Silver Springs, Maryland. Editorial Office United Mine Workers Building, Washington, D. C."

This particular Article, this is just an examination page 52 } tion of some of the things that we believe that we can show and should be able to show is shown on Page 3 of this particular issue under large headlines, "Plans for expansion of District 50 under way."

Under that is a picture of Miss Catherine Lewis, Secretary-Treasurer; picture of Martin Wagner, International Executive Board. The Article starts off by saying that the International Executive Board of United Mine Workers of America has laid out a plan for the further expansion and organization of District 50, and changes affecting the District Personnel have been made in official effect on August 1, 1941.

Many of these copies of the Journal which we have contain accounts of International Convention of the United Mine Workers of America. They have speeches and so forth in them made by John L. Lewis, referring to District 50, referring to United Construction Workers, telling what they plan to do, all of which we believe to be very relevant.

In one particular case we have a copy of a Resolution passed by an International Convention offering moral and financial assistance by United Mine Workers of America to District 50. Also its affiliate.

All of which goes to show the agency which we page 53 } have alleged, and which these people have denied.

They say in one breath that District 50 United Construction Workers are part of the United Mine Workers of America, might say part and parcel of it, and yet in the other breath they say but they were not the agents of United Mine Workers of America, United Mine Workers of America can't be held liable for anything District 50 did, even though all the time they were carrying out the policies of United Mine Workers of America.

We already have these copies of the magazine that we have called for. We are supposed to return them. And another question comes up, suppose we get into the trial of this case and then they raise a question and say that this hasn't been properly identified. How do we know it is a copy of United Mine Workers Journal.

We would like to have these things identified and furnished by them, so that that question will be obviated at the time of the trial.

We have already made a summary of everything in here that we think is pertinent. Of course, everything that is in the magazine isn't relevant, of course.

Colonel Harris: We call Your Honor's attention to the remoteness into which that Interrogatory goes. The alleged wrong that took place in Breathitt County, Kentucky, was in

July, 1949, as I recall from this long Notice of page 54 } Motion for Judgment, and those questions, some of them go back to 1940 and 1941, 8 or 9 years before. I don't see how it is possible to confine the trial to the pertinent issues if they can go and bring in stuff by the armful going back over a long period of years.

It seems to me that the limitations of time, the limitations of the human mind, and the memory of the jury, plus the points that Mr. Mullen made about the necessary prejudice, he explained, that would be created, many of the opinions held by the United Mine Workers of America Editorial Writer do not square, no doubt, with many of the opinions of many of the citizens who would be serving on the jury, men who would be called as jurors in the trial of this case, and when you come to try a law suit you don't try a man from the cradle to the grave. That is reserved for the judgment of the dead that takes place hereafter. All you try anybody for is the one controversy and the one alleged wrong.

Mr. Bryan: This goes right to the meat of the case, Your Honor, in a way. We are not attempting to try the United Mine Workers of America for a lot of different things that they had done. But in an effort to hold the United Mine Workers of America liable for one thing that they did, I think it is necessary for us to prove a relationship of agency.

At least, that is what we said. Either that or that  
page 55 } they are all one big organization, each principal  
and agent of the other.

They have denied that allegation, in their grounds of defense, and the question comes up as to how are we going to prove that. How better way can we do it, than by showing what they have done and what their officers, Executive Officers, have said, and what their International Executive Board, the Supreme governing body, has done.

The Court: Gentlemen, I will allow the question, but of course at the time of trial if any of these items are offered in evidence the Court of course reserves the right to reject any and all of them. It may be helpful to you gentlemen if it can be stipulated that they are copies, and that might save some time.

Mr. Moore: We will have to return these?

The Court: Return them after the trial?

Mr. Bryan: I expect we could return them after, Your Honor. But if they have extra copies which they probably have I believe it would be better.

The Court: Do you all have copies of these, Mr. Harris?

Colonel Harris: We have except for two.

The Court: Maybe you could stipulate about them, then.

Colonel Harris: Two of them are in the bound  
page 56 } volume, which is the only record that the United  
Mine Workers have. We haven't been able to get  
any extra copies of these two. The others we have.

The Court: Why not stipulate about those two? Couldn't you stipulate those two that you don't have that they are true copies?

Mr. Mullen: Do you have them, the first two called for?

Mr. Bryan: First two?

The Court: It is not to be understood the Court is declaring these magazines as admissible in anyway in evidence. The Court is not passing on that at this time.

Mr. Allen: Just requiring them to produce them and identify them as the official organ.

The Court: That is right.

Mr. Mullen: We note the exception.

Mr. Allen: May 15, 1940, and June 15, 1940.

Colonel Harris: What was the stipulation that Your Honor suggested? Do you mind repeating it?

The Court: I suggested that there are two copies that you gentlemen have in bound volumes that you would not like to get out of your hands. And I am informed that counsel for the plaintiff has those two copies. Am I correct in that statement?

page 57 } Mr. Bryan: I think so.

The Court: If that be true I am wondering whether or not you would be willing to stipulate that they are the two copies referred to in this question.

Mr. Mullen: I see no objection to that. We can take the bound volume back, then.

The Court: That would save you from trying to get copies.

Mr. Mullen: We will stipulate those two copies.

Mr. Allen: Shall we produce them here now and identify them so we will know what we are stipulating?

Colonel Harris: We said it was the first two in the question. And the question identifies them.

The Court: Then they are identified.

Mr. Allen: Yes. One No. 10, the other No. 12. That is right.

The Court: All right.

Mr. Mullen: We have no further objection to the question. We make the same objection to the question which is question No. 5. We make the same objection to that question in the Interrogatories addressed to United Construction Workers, and to District 50.

The Court: All right. Same ruling, of course, and the same exception.

Mr. Mullen: Yes.

page 58 } Mr. Bryan: You say that is question 5?

Mr. Mullen: I think it is question 5 in all of them? Yes, I know it is.

The Court: What about No. 6.

Mr. Mullen: No. 6 was only in that one.

The Court: What are these papers you presented to the Court?

Mr. Mullen: The objections that we made.

The Court: You want these filed?

Mr. Mullen: Yes, like I did before.

The Court: I will mark them as filed. There is no objection to the Court marking those objections to Interrogatories filed?

Mr. Allen: No.

Mr. Mullen: I gave you a copy of the United Mine Work-

ers. Yes, United Mine Workers. Here is the United Construction Workers.

Note: Handing paper writing to Mr. Allen.

The Court: Let the record show that the Judge is delivering the Minutes of the Executive Committee of the International Union to Mr. Mullen for safe keeping. When the Minutes are called for an returned to the Court the Court will give Mr. Mullen a receipt for same.

page 59 } Colonel Harris: All right.

Th Court: And the record will also show Colonel Harris, who was designated as custodian of these Minutes, has agreed to that arrangement.

Colonel Harris: That is right. And when Your Honor is through with them you will let me know so that I personally can come and receive them.

The Court: They personally will be placed in your hands. All right, Mr. Mullen, the Court now hands them to you.

Note: This package is now taken by Mr. Pollard.

Mr. Mullen: I will lodge them in my safe for tonight.

Mr. Allen: As far as we are concerned you may keep them in your safe.

Mr. Mullen: I would rather not do that.

Mr. Pollard: There is one other matter, Judge, we would like to go into. We did not have a reporter there and it is again a question of recollection, but I don't think anyone will disagree—

The Court: All right.

page 60 } Mr. Pollard: That is with respect to the depositions which were taken in Kentucky, when we dropped our objection to it it was with the understanding that the reporter was not necessarily correct in the objections, which we made to the admissibility of the evidence on the record, and that we would lose no right by that.

I have made an investigation into the law on that, and it is my understanding that we have to file the objections with the Court within a reasonable time after the depositions are filed with the Court, and we would like for you to fix a date by which we have to have that in.

The Court: What do you gentlemen have to say about that?

Mr. Bryan: Your Honor, when we were here before you may recall that depositions were taken in Pikeville, I think on August 18 and 19, and they were continued over until Octo-



ber 2. Mr. Mullen, Mr. Pollard, had indicated that they wanted to cross examine those witnesses. We had a hearing, I think here on either September 20 or September 26, and at that time it is my recollection that they said that they would withdraw all objections to the depositions which had been voiced, and that they were not going to cross  
page 61 } examine the witnesses. Nobody went out there.

Mr. Pollard: That is correct, Mr. Bryan, as far as it goes. We are withdrawing our objections to the incompetency of the court reporter, and Mr. Robertson—I don't like to say this in Mr. Robertson's absence, particularly in view of the fact that there have been so many times in this case that Mr. Robertson and I have had differences, and I think thus far I have been borne out on every one—But in view of his absence it is necessary to make this statement. We said that of course in dropping the objections to the depositions because of the manner in which they were taken by the reporter we were not giving up our objections to the admissibility of the depositions in evidence. That is, the objections to the questions and answers.

Mr. Moore: You waived your right of cross examination?

Mr. Bryan: I understood you were withdrawing your objections to the depositions, and you would not pursue a motion to have them—Don't know what the technical word is—

Mr. Pollard: Quashed, or suppressed.

Mr. Mullen: It is a very different thing from objecting to the individual questions.

Mr. Pollard: The admissibility of the testimony.

Mr. Mullen: I made that very clear, I thought.  
page 62 } Mr. Bryan: I think Mr. Robertson wrote a letter to Mr. Mullen about that.

Mr. Mullen: Not on the question of the individual questions.

Mr. Allen: Why were not the questions followed by the objections?

Mr. Pollard: The court reporter was so incompetent she had everything backwards and forwards. So we say we will not object to the evidence as written up by the reporter, and we asked Mr. Robertson specifically that today about the objections to the introduction of the testimony, and he said of course as I have indicated.

Mr. Allen: You mean by that you are not objecting to the correctness of the testimony as recorded, but you were reserving your objection on the subject of admissibility?

Mr. Pollard: That is right.

Mr. Mullen: We had indicated we might ask to have the whole thing thrown out because it was botched so, and we

said finally we will let it go, but we do not in that way give up the right to object to the individual questions, objections being not incorporated in the depositions themselves.

The Court: Objections were not noted in the page 63 } depositions?

Mr. Allen: But she didn't get them.

Mr. Mullen: She would just get the word "Object", for one thing, not saying what it was.

Mr. Cowherd: I was present during those depositions and the thing that caused this action was in part, probably almost entirely, as stated by the Court Reporter herself. When an objection was made by Mr. Pollard she would say "I will be the judge of what goes into the record."

Mr. Bryan: Who said that?

Mr. Cowherd: The court reporter herself. It was for that reason that we are positive that the record wouldn't be absolutely accurate, and she might or might not have gotten all of the objections properly placed, even if she had tried.

The Court: As I understand the situation now it is that Mr. Pollard, by withdrawing his objection to the depositions, did not withdraw his objections to the admissibility of the questions and answers contained therein.

Mr. Pollard: That is right. And Mr. Robertson said he wouldn't object to any objections made to that because, for instance, the objections that were made there the court reporter just would put down the words page 64 } that the defendants objects, and that was not sufficient. As long as Mr. Robertson agreed that we wouldn't be bound by just the defendant objects, or in cases where she failed to note the objection, that he wouldn't object to the manner in which the depositions were taken by the reporter.

The Court: But you reserved your objections, which are stated in the record?

Mr. Bryan: That is right.

Mr. Allen: In other words, assuming the testimony was recorded correctly you still object, you observe your objection to the admissibility.

Mr. Bryan: Didn't assume that you assumed the right to challenge the accuracy.

Mr. Pollard: No.

The Court: Not the accuracy.

Mr. Mullen: That is what we gave up.

Mr. Pollard: We understood we reserved the right, and Mr. Robertson agreed to challenge the admissibility to any and all of the depositions on the grounds as to whether or not they were proper evidence. And we understand that we

have got to state those objections and those grounds within a certain time, and we would like the Court to fix the time within which we have to state our objections to the admissibility of the evidence. Not to the accuracy of page 65 } them.

The Court: I see what you mean.

Mr. Mullen: Here is an example, Your Honor—

The Court: It may not be necessary, Mr. Mullen, to go into that. These gentlemen I think have agreed. Any objection to that, gentlemen?

Mr. Bryan: Mr. Pollard from time to time objects to various questions, and I suppose that objection would still hold. I didn't understand that he was withdrawing his objections.

The Court: He is asking now for a time limit within which to file objections in writing.

Mr. Pollard: That is right. I don't understand we are limited to those which actually appear in the record.

Mr. Bryan: We do.

Mr. Pollard: That was the whole point, Mr. Robertson said that he didn't object.

Mr. Moore: I don't recall the exact words, Your Honor, but I thought that after counsel for the defendants left the room for a short intermission there, and then they came back and said "We waive all objections to this testimony, but we reserve our right as to the admissibility of these questions at the day of trial", and that is what was said between the parties. I may be wrong, but that is my recollection of it.

Mr. Mullen: We reserve the right to make objections to the questions that appear in the depositions, and to, even though it is not stated that specifically counsel objected, or the grounds are not observed, because they left out a great deal of that, it comes down to the same thing, I think anytime that we introduce them in Court we have a right to object to any part of the depositions.

Mr. Pollard: May I point out one more thing? Mr. Mullen on the last page of those Interrogatories stated that the defendants reserved the right to object to any and all of them at the time of trial, and the plaintiff didn't object to it.

The Court: Why not set a time limit for counsel for the defendants to file their objections, as they see fit.

Mr. Allen: How much time would you all want?

Mr. Mullen: We have got some 500 questions between now and November 15, for one thing, and we still have to argue the question when it comes up here, and it takes time to do that. That would be quite a laborious thing to go through there

160 pages of depositions and state your objections and write out the reasons for them all.

Mr. Allen: Yes.

page 67 } Mr. Mullen: To state the basis, reason for the objection. It will be a pretty big job for somebody to do.

The Court: How much time do you think you will need, Mr. Mullen?

Mr. Mullen: Fred, how much time do you want? I will not do it. Fred will do it, he don't know it up until now.

Mr. Pollard: I think December 1 would be reasonable, gentlemen. Your Honor, it is really some question as a matter of law whether we have to do it until the deposition is really offered. But to avoid that bridge I thought we might get it in in advance.

The Court: How would December 1st, suit you, gentlemen?

Mr. Allen: If the objections take a form which could be readily remedied we ought to have time enough to remedy it. That is, if we consider the objections meritorious, and want to cure the objection we ought to have an opportunity to do it. Wouldn't have an opportunity to do it if you wait until December 1st. How about November 20? That will give you about three weeks.

Mr. Pollard: November 20.

The Court: All right. Set November 20, on or before.

Mr. Mullen: We will be up against it until the page 68 } 15th. That will only leave you 5 days after that—

The Court: Let's say November 25.

Mr. Bryan: Do the defendants intend to present a motion to consolidate these various causes?

Mr. Pollard: Yes, sir, we do.

Mr. Moore: You do want to consolidate the cases?

Mr. Pollard: Amend our other suit and then consolidate.

Mr. Allen: We would have to oppose that strenuously.

Mr. Bryan: Different parties, different issues.

The Court: It will take some time to hear argument on that, I suppose.

Mr. Cowherd: It seems as though you will give all the time of the Court between now and December 1 to this one case, the way we are proceeding.

Mr. Mullen: Of course we haven't done what we came up here to do today. That is, Your Honor, to argue our objections to the answers on there.

The Court: May I ask how long you think it will take to settle those questions, Mr. Mullen?

Mr. Mullen: It won't take me very long. I won't talk very

long. Might take the other side right long. We served you  
a copy of our objections.  
page 69 } Mr. Allen: Yes.

The Court: Only date that I know I have open  
at the present time would be from 11:00 o'clock on the 30th.

Mr. Mullen: We would be in Washington. Made all arrangements to have everybody up there.

Mr. Cowherd: Have called in men from all over the field for the 30th and 31st.

The Court: Then it would not be reasonable to set it on that day, then.

Mr. Cowherd: Mine you, if you please, every bit of this is occasioned by their Interrogatories, trying our best to get the answers up to their Interrogatories.

The Court: I realize the tremendous task of work involved.

Mr. Mullen: There is nothing that I could do, I mean no time that I would have between now and the 6th, 6th of November except the 2nd day of November. Fred, we don't have but one day in Newport News, will we, that is the first?

Mr. Pollard: I hope so.

Mr. Mullen: Then I have to leave again on the 3rd. I have the 2nd, and after that I have the week of the 6th.

The Court: You gentlemen give me your open dates, and I might have a case that would go off the docket,  
page 70 } and I could communicate with you.

Mr. Mullen: The 2nd day of November.

The Court: November 2 is open?

Mr. Mullen: The whole week of November 5th, yes.

Mr. Moore: November 7 and 8 is not open for Mr. Robertson.

The Court: What else, Mr. Mullen?

Mr. Mullen: These are open dates.

Mr. Allen: November 5th is Sunday.

Mr. Mullen: The week of—

Colonel Harris: November 2 is open, Mr. Mullen.

Mr. Mullen: Yes, and all the week of the 5th.

Note: At this point the reporter is requested to not take down this discussion as to open dates, which is not recorded nor transcribed here in the record. Following this discussion on open dates, the following occurs:

Mr. Moore: What are the exact things to be taken up at that time?

The Court: Objections to the plaintiff's Interrogatories to the defendants will be taken up at that time.

Mr. Mullen: The plaintiff's answers—  
page 71 } The Court: Strike that, then, Mr. Edwards.  
The plaintiff's answer to the defendant's Inter-  
rogatories will be taken up. (Speaking to the Reporter.)

Mr. Allen: Objections of the defendant to the plaintiff's  
answers?

Mr. Mullen: Yes.

The Court: What else?

Mr. Pollard: Question of consolidation of suits.

The Court: Those two questions.

Mr. Moore: I have one more that Mr. Robertson prepared,  
which is a ruling, as far as his records show, on the Interroga-  
tories so far, we would like to get that officially entered be-  
fore the answers to the Interrogatories come in, if possible.

The Court: In other words, you would like to discuss at  
this time the entrance of the order. I think it well to enter  
an order at the earliest possible moment.

Mr. Moore: Most of those questions are those that have  
been reframed, and are set out there.

The Court: You want to keep this order—

Mr. Moore: Leave that with you.

Mr. Mullen: Have you given us copies?

Mr. Moore: Yes.

Mr. Mullen: Exception to the Court overruling  
page 72 } the objections to the Interrogatories described as  
further Interrogatories addressed on October 12,  
1950, to United Construction Workers, and the same District  
50, United Mine Workers.

The Court: I think the record will show you did except.  
But anyhow it won't do any harm to put it in the record  
again.

page 1 }

Before Honorable Harold F. Snead, Judge.

Richmond, Virginia,  
November 2, 1950.

Present: A. G. Robertson, Esq., George E. Allen, Esq., T.  
Justin Moore, Jr., Esq., Counsel for the plaintiff.  
James Mullen, Esq., Robert N. Pollard, Jr., Esq., Crampton  
Harris, Esq., Counsel for the defendants.

page 2 } Mr. Robertson: Is it agreeable that Mr. Bryan, without disqualifying him as a witness, can participate in the proceedings in chambers with the understanding that he does not thereby forfeit his right to appear as a witness, it being understood that he shall not participate as counsel in the trial in the presence of the Jury.

Mr. Mullen: That was agreed to the last time we were up here. I didn't know it was going to continue.

Mr. Harris: I am willing to defer to your judgment and your feeling in it.

Mr. Mullen: All right.

Mr. Robertson: Let the record show that Mr. A. Hamilton Bryan is also present. He is President of the plaintiff corporation. Mr. W. P. Owen—

Mr. Harris: He is present as a spectator and not as counsel and not appearing as counsel.

The Court: Add that Mr. Bryan is the President of the Laburnum Construction Corporation, the plaintiff.

Mr. Robertson: And it is stipulated between counsel for all parties that he may participate in the hearing today without disqualifying himself as a witness in the case.

Mr. Mullen: I objected to the order because that order shouldn't be entered until we complete the rulings  
page 3 } on this matter of today. It covers the same thing and I frankly have not looked at it. I have been in Richmond one day since the hearing and have been in Washington working on these interrogatories, and I notice some additional ones. I don't know how long they are or whether it requires any investigation or whether it requires us to go back to Washington but we are not prepared to take up the question of that order today and we don't think it is the time of take it up.

Mr. Robertson: The reason I suggest that order and the reason I think that order ought to be entered, if it is correct—of course, there are going to be orders entered all along through the progress of the case—there have been so many interrogatories and they have been handled in such a sort of free and easy way and it is so easy to get confused on them. What I have tried to do in that order is to have the Court record its rulings in orderly and correct sequence. I think that those orders are factually correct. I have checked them just as carefully as I know how and I have had Mr. Lowden and Mr. Moore and Mr. Bryan and Mr. Allen check me as well as they could. I think they are correct. You may find some errors in them but there are not any that I know of, and the purpose of the order is to have something to pin to



when people's recollections of what the rulings were fade out. I put the best part of several days on preparing that order and I think it is correct and I think it ought page 4 } to be there as a safeguard to everybody, including the Court.

Mr. Mullen: We don't have to argue the desirability of entering the order. We agree with that, but we must have time to examine the order and see whether it is correct as you have drawn it. That we have not had time to do because we couldn't do two things at once.

The Court: Suppose we take up first the defendant's objections to the answers to their interrogatories?

Mr. Robertson: Before you do that, let me call the attention of the Court to this: You remember throughout these preliminary hearings where objections have been made to the admissibility of various testimony and the propriety of various answers and everything, the Court has ruled time and again that it is going to defer its rulings on the actual admissibility of any evidence before the Jury until the case is in progress of trial because as the case develops and the issue is presented in the course of the trial, the Court can determine more justly whether the evidence is in or out. As I understand it—and I have put that in that order—time and again, and at the meeting before the last, at the last minute Mr. Fred Pollard asked would it be agreeable to me to have the Court consider the defendant's objections to our answers at that last meeting. I said I had no objection to it. I don't object page 5 } to whatever argument anybody wants on it or whatever consideration anybody gives it provided the

Court will defer its ruling until the progress of the trial which I understand is what the Court has said it was going to do.

Mr. Mullen: I think you probably misunderstood Mr. Pollard. His statement to the Court was that, as he understood the law, he had to complete his objections and submit them to the Court within a reasonable time after the depositions were taken; otherwise, he would be prevented from so doing.

Mr. Robertson: I can save you something there because I consider myself and the plaintiff bound by what I wrote you in my letter of September 28th, paragraph 4, which I think covers this and I think will clear your doubt on that: "Mr. Mullen stated that unless the plaintiff wished to take further depositions at Paintsville, Kentucky, on October 3, 1950, pursuant to adjournment of depositions which were taken at Paintsville in behalf of the plaintiff on August 18th and 19th, 1950, the defendants would withdraw all objections to introduction in evidence of the depositions taken on August 18th

and 19th"—that was about the Court Reporter being a competent person—"it being understood that the defendants reserved the right to object to the introduction in evidence of any testimony to which they objected at Paintsville, whether or not the ground of such objection is actually set forth in the deposition."

Mr. Mullen: Read the last sentence of that.

Mr. Robertson: "It being understood that the defendants reserve the right to object to the introduction in evidence of any testimony to which they objected at Paintsville, whether or not such objection is actually set forth in the deposition."

Mr. Mullen: Do you consider that any different from what you stated a few minutes ago, that the Court would have the right to rule on objections to evidence at the time of the trial and that for that reason it had reserved the right from time to time to change the rulings it had made so far?

Mr. Robertson: Yes.

Mr. Mullen: If Mr. Pollard, say, should object to the introduction before the Jury of a portion of those depositions taken out at Paintsville on the ground that it was irrelevant, or for any other reason, that right he still has?

Mr. Robertson: Yes, sir, that is my understanding.

Mr. Mullen: I don't want that language to be confined solely to objections made at Paintsville.

Mr. Robertson: That is exactly what I do mean. If you didn't make the objection out there, I think you have waived it. I think the Judge has the right to reserve any ruling he wants to until we get into the trial. I don't think any objection will come up. I think they objected to everything on earth out there but I think, for instance, suppose you object to some of the testimony in those depositions on a ground that never occurred to anybody at Paintsville, that everybody overlooked. I think you have got a perfect right to do it.

Mr. Mullen: That isn't exactly consistent.

Mr. Robertson: I said if you objected but didn't state the grounds, then if you saved your objection and exception, I think every ground in law that you can think of is available to you under that objection and exception, whether you called attention to it at that time or not.

Mr. Harris: As I understood Mr. Fred Pollard in our last hearing, he made a statement to the Court that was not opposed by the gentlemen on the other side which involved a greater and more extensive right on the part of the counsel for the defendants as to those depositions and it was not limited to the elaboration of objections made with the details of the objection not specified but it was a reservation of the

right not only to elaborate on the objection by stating specific grounds but it embraced the right to state an objection that you had not made before.

Mr. Robertson: My suggestion on that is to let that ride until the trial.

page 8 } The Court: I think that would be advisable.

Mr. Robertson: You may urge some objections there that I am perfectly willing for you to make.

Mr. Mullen: I don't recall the exact language of it. It will appear when we get the transcript of that hearing which we have not gotten yet.

The Court: We should have the benefit of the transcript. That was the hearing last Tuesday.

Mr. Mullen: We will take up the objections to the answers to the interrogatories in the order that the answers were made.

Mr. Robertson: It was principally on the ground that they were irrelevant or self-serving. Read the objections out.

Mr. Mullen: The first objection was made to the answer to 1(d). 1(d) was "What was the maximum net profit the plaintiff could have earned under this contract?" The plaintiff has answered, "The maximum net profit which plaintiff could have earned under said contract dated October 28, 1948, for work in connection with construction of said coal preparation plant was the sum of \$12,000." The part we object to as surplusage is "With respect to the construction of said schoolhouse and other work in addition to said coal preparation plant, there was no limitation to the net profit which plaintiff could have earned."

page 9 } The Court: We are still on (d).

Mr. Mullen: On the second page. "There was no limitation to the net profit that plaintiff could have earned under said contract. Such net profit, however, would have been equal to 5 per cent of the cost of the work."

Our question was addressed to the specific contract which had been introduced, not to what other work they might have gotten. We asked simply in regard to the maximum net profit that could have been earned under the contract which had been introduced in evidence as the contract between the plaintiff and the Concrete Pocahontas Company.

Mr. Robertson: That goes right back to the point I mentioned here at the outset here this morning, that the Court is going to defer its ruling until the thing is introduced at the trial and then it will be perfectly apparent and obvious that it is either correctly in or correctly out, whereas at this time we are really guessing at it. I don't think that the Court at this time, for instance, wants to go into the ques-

tion of the deposition Mr. Salvati gave in Huntington which is in the papers here, whereas he talked about the business relationship which Laburnum had built up with Island Creek Coal Company. It was an overall picture of the thing and that may or may not affect the admissibility of this thing here and I think we are right back where we were before, that the Court would defer its ruling until the matter page 10 } comes up at the trial and I think by going through it item by item today we are going to do what we are going to have to repeat at the trial.

Mr. Allen: Mr. Mullen, how does this question come up—the matter we are discussing now? It seems to me it would come up under a motion to strike the answer. There is no motion to strike the answer and just simply a discussion of objections even under a motion to strike would be premature. What you want is to keep this from going before the Jury as evidence. It hasn't been offered yet and nobody can tell at this stage of the case whether it is relevant and material and proper until you get further into the trial.

Mr. Mullen: We are in this position: This is an answer to interrogatories made by plaintiff or propounded to plaintiff by the defendants. The plaintiff can't introduce this. The defendant is the only one that can introduce it in evidence. We are not going to say we are going to introduce these answers in evidence but we object to them.

Mr. Robertson: I don't care what form it comes up in. With me it is all right the way it is up here now but I think, for instance, suppose when we get into the trial you want to offer that and you say, "There is your answer and here is a whole lot of stuff strung onto it that we think ought to be eliminated and the other part put in." I think we would have that matter out right before the Court at that page 11 } time and the Court would rule and then put it in or keep it out accordingly.

Mr. Harris: Judge, I didn't understand that Your Honor ever used the words "You were deferring ruling." I understood Your Honor was making rulings as we went along. And you stated as to several of the rulings, that you reserved the right to change them, and that is why we are up here today. We understood that we had the right to make objections and that we would get rulings. We are not here just for idle discussion.

Of course, Your Honor has the right, and wherever you have felt so inclined you have stated, "I reserve the right to change my ruling," but it would cause confusion to wait until the trial, and we have filed too many things to take them up when we have a Jury sitting there.

Mr. Robertson: What the Court has said it is going to do conforms to the Virginia practice; that is, if we get in the trial and the evidence is offered, the Court will rule whether it is admissible or not, and then admit it or hold it out accordingly. The Court has said it was going to do that because you can't tell until the pattern of the trial is set.

The Court: That has been my thought. Of course I have been making all the rulings that I thought I could consistently make at the time, but I do consider that I reserved page 12 } the right to reject any of the interrogatories, or all of them, at the time of the trial. The Court does not know what trend the case is going to take as the evidence develops.

Mr. Robertson: I think if we do that, we are going to wind up doing it twice. For instance, if he rules against you on some stuff today you are certainly going to take another crack at it at the trial, and so are we. So we are doing it twice instead of once.

Mr. Mullen: Of course, the Judge understands in our practice he has the right at the time of the trial, as you say, to sustain objections to any part of the interrogatories or anything that is offered in evidence at that time. I had understood that is the way Your Honor did, sir, to try to dispose of as many matters as possible in preliminary hearings—at least I get that word from Fred Pollard.

The Court: That is true. I want to dispose of as many matters as we can.

Mr. Robertson: So do we, but I think this: Suppose you get a tentative ruling against you today on these things. You haven't got any idea of accepting that as final and not trying to upset it in the light of the way the trial develops. I certainly haven't got any idea of doing that.

page 13 } Mr. Mullen: That is a matter, of course for the Judge to rule upon. I, of course, understand what the Virginia practice is to some extent anyhow.

Mr. Allen: I would like to add this. The question here is the admissibility in evidence before the Jury of that part of the answer to the interrogatories they object to. I say at this stage of the trial you cannot pass on its admissibility.

The Court: In other words, you allege it is surplusage?

Mr. Mullen: Yes.

The Court: At the trial if the Court be of the opinion it is surplusage, the Court can strike it.

Mr. Mullen: That is it.

The Court: All of these objections are as to surplusage?

Mr. Mullen: Yes, I think they are.

The Court: Well, Gentlemen, having listened to the argument of counsel of both sides, the Court is of the opinion that it would be best to defer rulings on these objections until the trial.

Mr. Mullen: Let me see the papers Fred has prepared.

The Court: In connection with what?

Mr. Mullen: This is in regard to the consolidation page 14 } tion.

The Court: We will take up that question next dealing with the consolidation of the two suits pending in this Court.

Mr. Mullen: Fred has prepared a motion for non-suit, and a motion to amend. And he has eliminated every one as a party plaintiff to this motion except the defendants United Construction Workers.

Mr. Mullen: There has been brought in this Court a suit by United Construction Workers and by certain individuals who claim to have signed up to join the United Construction Workers, and who were employees of Laburnum. Under this motion, the non-suit and the motion to amend, all of those plaintiffs have been eliminated except the United Construction Workers, which is one of the defendants in the principal suit here. And there are no other allegations except what appear in the motion filed by the Laburnum Corporation other than the allegations that a majority of the laborers employed by the Laburnum Corporation had signed up to be represented by the United Construction Workers, and that the Laburnum Corporation on July 27, 1949, wrongfully and without lawful cause, justification or excuse, discharged from its employ all of its employees who had made application to join the union. Other than that there are no allegations that are not contained in the motion in the cause here filed page 15 } by Laburnum Corporation. This is a motion to non-suit and to amend and to consolidate the causes.

Mr. Robertson: Now, of course, if Your Honor pleases, it is perfectly agreeable to us for them to non-suit their plaintiffs if they want to. We have no objection to their non-suiting the individuals, but we say that it is undesirable to consolidate that cause with this cause for these reasons. The purpose of consolidation, which is largely within the discretion of the Court, is to clarify and simplify the issues in order to aid the Jury and the Court in reaching a just conclusion, and as the Court has said at one of our prior meetings here, this case already has enough angles and points and headaches in it to give anybody all they can do to bring these issues that the one case presents to the Court to an end.



Regardless of what Mr. Mullen says, the parties are still different; you have got different parties; you have got different issues as between different parties and the law is totally different.

To show you that, Your Honor—of course, if you have read that thing through you can see a large part of it is a paraphrase of the Taft-Hartley Act, and of course, I will come back to the law in a moment. What we are proceeding under here, everybody has agreed of record that this case now before the Court that we are arguing this morning page 16 } is governed by the law of Kentucky—the substantive law of Kentucky—and, of course, the procedure law of Virginia.

Let us see what they say back here. Come to paragraph 9.

Mr. Mullen: Let me suggest this: I got to Richmond last night and this was handed in this morning. Fred was called in a meeting that he had set quite sometime ago. I would much prefer, inasmuch as he prepared all the papers, to defer and let him present his own case. I am frankly not familiar with it.

Mr. Mullen: He will do it very promptly.

Mr. Robertson: If Your Honor please, I have inherited so much from Mr. Flippen. I was called out of town last week from Tuesday on, and I am just as busy as Mr. Mullen and Mr. Pollard—I mean, if he could come up here this afternoon or during the day—

Mr. Mullen: He is in a labor hearing and we never know when we get in those how long it is going to last.

Mr. Robertson: If we finish here at seven o'clock tonight I drive to Leesburg tonight to hold a meeting when I get there and drive on from there tonight—that's the pains I took to be here.

I think you can dispose of it right now if you will let the Court read paragraphs 9 and 10 of your motion.

page 17 } “9. By refusing to recognize the union as afore-  
said and by discharging its employees who had  
made application to join the union as aforesaid, the Company  
wrongfully interfered with, restrained, and coerced the union  
and such employees in the exercise of the rights guaranteed  
them by the laws of the State of Kentucky, Section 336.13C,  
Baldwin's Kentucky Revised Statutes.” There you have the  
Kentucky law—“By the laws of the State of Virginia and by  
the laws of the United States of America.” If that isn't a  
hodge-podge I never heard of it. We have got in our case to  
guard Virginia rights even against the law of Kentucky—



they come along here with Kentucky law, Virginia law and Federal law.

The next paragraph: "By adhering to and giving effect to the contract with Richmond Building and Construction Trades Council, as aforesaid, the Company unlawfully conspired with said Council and its members to create and carry out restrictions in trade or commerce and to abridge the right to work because of membership or non-membership in a union in violation of the laws of the State of Virginia (Code of Virginia 1950, as amended, Title 40, Chapter 3, and Title 59, Chapter 3), and of the laws of the United States."—laws of the State of Virginia and laws of the United States. I think what they have reference to is in the trust law—so they have got the laws of Virginia and and the laws of the page 18 } United States, and if that isn't a hodge-podge—

Mr. Moore has worked up a memorandum on that.

The Court: I am wondering about this. Mr. Mullen has certainly cooperated in every way he could in this case—

Mr. Robertson: So have I.

The Court: —so have Mr. Robertson and all of you, and I am very much impressed with the cooperation you have made on both sides.

Mr. Robertson: I am perfectly willing to do it provided I am in town. What I am trying above all else is to keep this case from being continued, and not going to trial on December 11th.

The Court: The Court is making every effort to accomplish that fact also. I might suggest, Mr. Mullen, in view of what you said, that Mr. Pollard might submit me a little memorandum, and I will look at it within a very short time; and I will ask that he furnish it within a very few days, and Mr. Moore can also submit one.

I realize that there are a lot of difficulties in this case and counsel on both sides have been very busy working up the case, and I don't want to rush Mr. Mullen into the matter this morning. I know you have been in Washington for the last two or three days—I imagine working on answers to interrogations.

Mr. Mullen: I have worked on nothing except page 19 } this case.

Mr. Robertson: What about your case in Federal Court? Are you going to lub that one in here?

Mr. Mullen: I understand they are going to dispose of that. I have not handled that phase of the matter.

Mr. Robertson: Don't forget that one—that's a mere matter of million dollars.

The Court: Do not overlook the Court in this matter. The

Court has worked in this, too. I have given you every spare day I have had, and my other work is getting behind. I am going to give you the right-of-way and get rid of it.

Mr. Mullen: Suppose we don't argue this motion at this time? Suppose we do not file this motion at this time?

Mr. Robertson: We want the motion filed so we will know at what we are shooting.

The Court: File the motion, and let Mr. Pollard file his memorandum, and you all may reply to it.

Mr. Harris: There are two motions.

Mr. Robertson: Will you put a time limit?

The Court: Yes, I will put a time limit on it.

Mr. Robertson: When do you want their memoranda and when do you want ours?

The Court: What will be a reasonable time?

page 20 } Mr. Mullen: Do you think it should be done by

Tuesday or next week?

The Court: And give counsel one week to reply?

Mr. Robertson: That is all right. Of course, he has worked so hard to prepare this motion all we ought to have to do is—

Mr. Mullen: Fred may know about it.

The Court: The Court will request Mr. Pollard to file a memorandum earlier if he can, and if it is filed earlier and a copy is delivered to counsel for the plaintiff, then their time will begin to run from that day.

Mr. Harris: There is a certificate on the next page.

Mr. Allen: Why not file the memoranda simultaneously?

The Court: Each side file a memorandum simultaneously, and I will give you one week within which to do it.

Mr. Mullen: That will be all right.

The Court: And that is agreed to by counsel.

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page 24 }

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Mr. Robertson: We have filed here today interrogatories which we have numbered 14 and 15 and 16. They are addressed respectively to the three defendants and we would like to go over those at this time. You all may not object to them.

Mr. Allen: I thought the Judge had already ordered them to answer those.

page 25 } The Court: These are new ones.

We will recess about five or ten minutes and give counsel an opportunity to look them over.

I will mark the motions filed.

Mr. Mullen: If you keep on filing them the Court can't answer on five.

(A short recess was taken.)

The Court: Counsel has indicated to the Court that they would like to have time to study these interrogatories just presented.

Mr. Robertson: Couldn't we all take that up on Thursday of next week, too?

Mr. Mullen: We have to go to Washington to get the information.

Mr. Harris: What is the statutory time to answer interrogatories?

Mr. Robertson: The Court has entered it here. If you will not interrupt me I will try not to interrupt you.

Mr. Harris: It is a question of who has the floor as to who is being interrupted, if the Court pleases, and we were making a statement to the Court about our objections.

He hands us interrogatories as to three different defendants which seem to be, on a rapid reading, as general and as extensive as possible and we want a reasonable time in which to study those interrogatories, confer with our clients, and prepare formal objections that would be a part of the record the same as the interrogatories are, and at this time we ask the Court for such reasonable time.

Mr. Robertson: To keep this gentleman straight: This gentleman wasn't here and therefore he hasn't read the order and he doesn't know what he is talking about. I grant you that he is entitled to a reasonable time, and I unite in the request that he be given that—and I want a time limit put on it.

The order, which the Court entered here, (and apparently he has not read—the first time we were up here in one of these pre-trial conferences—and it is in the papers there) said that any interrogatories which the Court ruled to be answered either then or thereafter would be answered by, I think it was the 15th of November. It was either the 15th or 16. Of course, I realize if they put in a date which would not give them a fair time to answer, the Court would not hold

them to that and I would not ask the Court to do it, but I ask the Court to fix a time to act on them.

Mr. Mullen: I don't think you can keep filing interrogatories and claim they come under that order.

Mr. Robertson: I already said I didn't think it page 27 } necessarily came under that order, but I think if you have got thirteen days, which is practically two weeks, to answer those interrogatories—I think that is ample time.

Mr. Mullen: We are talking about time to make objections to them now, not time to answer them.

Mr. Robertson: Would the Court like to hear a discussion now as to why we think they are proper or would you rather wait?

The Court: I think we should wait, Gentlemen. These interrogatories have just been delivered to counsel.

Mr. Robertson: I think if you discuss it now you would wind up by doing it twice.

The Court: And the Court is going to give counsel a reasonable opportunity to look these interrogatories over.

Mr. Bryan: I would like to say this, Your Honor: Interrogatory 16, question 7 asks whether or not George J. Titler, President of District 29, United Mine Workers of America, on or about August 2, 1949, sent a certain letter to various local unions. That letter is quoted. The letter appears in full in an issue of the Welch Daily News, Welch, West Virginia, published on August 2, 1949. We know who wrote the article and we can prove the letter by him. I simply point that out because there is nothing in here to indicate to you where it appeared.

Mr. Mullen: I can't imagine by any reasoning page 28 } that that question is pertinent to this case. That

letter, as you quoted it there, refers to District 29 of the United Mine Workers undertaking to organize, and what that has to do with the United Construction Workers in this case—

Mr. Robertson: We will show you. Just give us time.

Mr. Mullen: I don't say we gain anything by attempting to discuss them now.

Mr. Robertson: I am asking the Court to put a time. What counsel is asking is for time to consider these further interrogatories, Numbers 14, 15 and 16. These interrogatories were presented to counsel for the defendant this day, and they have not had an opportunity to study the interrogatories.

Mr. Mullen: Judge, we have dictated and are trying to type up and revise, if necessary, the answer to five hundred

questions in those other interrogatories. We have spent a week doing that and that will be written up by the stenographers and we have to go over the copies, and I have got to do other work on that order with Mr. Robertson next week. There is just a limit to what you can do in a certain length of time and those interrogatories are very long, and it is going to take forty or fifty pages to answer them—and more. It has to be gone over, checked and revised. We spent days dictating it and the stenographers are writing it page 29 } up. We have got to go over and check every figure and date and everything in it.

The Court: Would you be in a position to inform counsel for the plaintiff when you gentlemen have your conference on the 10th, I believe, as to whether or not you are going to object to any of the interrogatories presented?

Mr. Mullen: We will do that.

The Court: Then, if you will call me I will try to find a time to hear you.

Mr. Mullen: There is only one week and two days before the 15th and—

The Court: The Court will give you a reasonable time.

Mr. Allen: Mr. Mullen, at that time that you inform us of the interrogatories that you will object to, would you mind indicating briefly the nature of your objections?

Mr. Harris: I think we ought to put in formal objections, if the Court pleases, and not have anything resting in parole.

The Court: I expect you to file formal objections, which won't bind them at all.

Mr. Mullen: We will notify you on the 10th whether we are going to object, and if we can we will have the objections written out by that time.

page 30 } Mr. Robertson: I think what Colonel Harris says is all right; I think it is better to have the whole thing nailed down in written form.

The Court: I think it ought to be in writing.

Mr. Robertson: If Your Honor please, we have five photographs here showing the scene of the job site involved in this case, and various angles of it, and we can, of course, get the photographer here and prove them but we hoped you might stipulate that they could come in as exhibits.

Mr. Mullen: I don't think there is anybody here who could say whether these are correct pictures or not. We will submit them to somebody who knows, and see what they say about it.

Mr. Robertson: You can question Mr. Bryan right now.

Mr. Mullen: If they are correct pictures, I don't think we will make you bring a photographer here.

Mr. Bryan: I know of my own knowledge that they are the pictures of the job site. I couldn't testify that I took the pictures.

Mr. Harris: We won't force you to bring the photographers here.

The Court: You will want an opportunity to present these pictures to some one of the defendants who have  
page 31 } visited the scene and have them state—

Mr. Mullen: And whether in their opinion in presenting these there should be additional pictures taken.

Mr. Robertson: Could you take those pictures with you and give us that information by next Thursday?

Mr. Mullen: We can do that.

Mr. Robertson: That is all I had on my list.

Mr. Harris: It will never be our position to put anybody to any unnecessary burden in proving something like that. All we want to do is have time to check up with our people.

The Court: I think you are entitled to that.

Mr. Allen: I would like to make this observation here: We are not assuming that under the law it would be necessary, or anybody else can take the witness stand and state that he is familiar with the locality, and that those pictures are accurate reproductions of the scene, that makes the pictures admissible in evidence under the law.

Mr. Mullen: There isn't any cause for taking the Court's time about that. There is not going to be any trouble about admitting them.

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page 1 }

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Transcript of a pre-trial conference before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, on November 28, 1950.

Appearances: Mr. Archibald G. Robertson, Mr. George E. Allen, Mr. T. Justin Moore, Jr., Counsel for plaintiff.

Mr. James Mullen, Mr. Crampton Harris, Mr. Robert N. Pollard, Jr., Counsel for defendants.

page 2 }

. . . . .

Mr. Mullen: Your Honor, would you like to dispose of this order on the interrogatories first? I think we can have that ready quickly.

The Court: I suppose that is the right thing to do first.

Mr. Bryan: The first thing was Question 4.

Mr. Mullen: I can cut it down a great deal. While I don't agree entirely with the form of the question, it is immaterial. We have no objection to the first eight pages. That cuts out a number of questions. A number of questions we have objected to, but they have been answered so it doesn't make any difference.

On page 9 that item there should read this way—

Mr. Robertson: Which one?

page 3 } Mr. Mullen: Number 2: "Need not answer questions in Interrogatories (4) numbered 78, 123, 124 and 125, but counsel for defendant United Mine Workers of America stated to the Court that they would recommend to said defendant that that said defendant submit to the Court the minutes of all meetings of the International Executive Board of United Mine Workers of America held between the dates October 28, 1943, and August 4, 1949, and also since August 4, 1949, for inspection by the Court."

Now right there we leave out: "in the presence of counsel for all parties."

Mr. Robertson: That is all right. I don't want that in there anyway.

The Court: "In the presence of counsel for all parties"?

Mr. Mullen: Strike that out.

Mr. Robertson: We can depend upon the Court to do what is right.

Mr. Mullen: "in order that the Court may determine what parts of such minutes, if any, shall be furnished plaintiff on or before November 15, 1950." Of course, that is impossible. Those words "November 15" ought to come out.

The Court: That is bound to come out "on or before November 15", but counsel for defendant United Mine Workers of America contending that portions of said minutes contain confidential information, the Court ruled that counsel for plaintiff shall not have access to the aforesaid minutes; and counsel for defendant United Mine Workers of America agreed to advise the Court on or before October 24, 1950, whether or not defendant United Mine Workers of America will follow the aforesaid recommendation of counsel."

Now I would like to add this: "Counsel for said defendant on or before said date advised the said Court that said defendant would follow that recommendation and said minutes



covering said period have been made available to the Court."

Mr. Robertson: That is all right. That is a new sentence.

Mr. Mullen: So we will add: "Counsel for said defendant on or before said date advised the Court that said defendant would follow said recommendation and said minutes covering said period have been made available to the Court."

Now, on page 10 we agreed to Question 35 (c)—that the words "with affairs" in the sixth line from the top and the words "the affairs" in the fifth line from the bottom come out. It doesn't make any difference to me whether they come out or not; they have been answered.

Mr. Robertson: Just leave them in then, so as not to make it up.

Mr. Mullen: Now 37(c): "What interpretations of the meaning of said 'International Constitution' made by the President of United Mine Workers of America were put into effect between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949"?

Mr. Robertson: Mr. Bryan, you ought to listen to this.

Mr. Mullen: The Court ruled that that should read: "Were interpretations of the meaning of said 'International Constitution' made by the President of United Mine Workers of America"—"Were" instead of "What".

Mr. Robertson: Then the next "were" would come out.

Mr. Mullen: It should read: "What interpretations of the meaning of said 'International Constitution' were made by the President of United Mine Workers of America were in effect—"

The Court: "were" comes out there and "in effect" comes out.

Mr. Mullen: "were made between the dates October 28, 1948, and August 4, 1949".

Mr. Robertson: Of course, if they were made we want to know what they were.

Mr. Mullen: The Judge ruled we didn't have to furnish copies of the interpretations.

The Court: It seems to me we ought to change that.

Mr. Robertson: I want to make this point right now. That is why, in my opinion, the Court ought to insist that counsel on both sides ought to insist that some kind of an order is entered on these things.

Mr. Mullen: We agree on that.

Mr. Robertson: I worked on this thing way back in October and watched this thing and no one can remember what happened.

The Court: We are in accord. The transcript will show.

Mr. Robertson: What date were we here on in August?

Mr. Mullen: This was the October 12th hearing.

Mr. Robertson: All right, we agree on that one then.

Mr. Bryan: That is what you decide?

The Court: Yes.

Mr. Mullen: They are all except I want to call attention to one thing—I have cut all the others out because they have all been answered and there is no use objecting to them, but on page 17 it says that “On October 12, 1950, the Court ruled that the defendant United Construction Workers, Affiliated with United Mine Workers of America, must answer questions in Further Interrogatories (8) numbered 87, 88 and 89—”

page 7 } The Court: Where are you reading?

Mr. Mullen: The second paragraph.

The Court: I see.

Mr. Mullen: “that defendant District 50, United Mine Workers of America, must answer the questions in Further Interrogatories (9) numbered 89, 90 and 91 on or before November 15, 1950; and that defendant United Mine Workers of America must answer questions in Further Interrogatories (10) numbered 118, 119, 120, 121 and 122 on or before November 15, 1950.”

When Mr. Robertson and myself went over there we didn't have those, but they have all been answered in the originals because they were duplications.

Mr. Robertson: That is right, and I put this in here to complete the chronological story.

Mr. Mullen: They have been answered.

Mr. Robertson: So just leave it as is.

Mr. Mullen: With that exception then to change—

Mr. Robertson: Let's make those changes and get the order entered, which will really bring it up to date.

(Order changed accordingly.)

Mr. Mullen: My recollection is you and Mr. Lowden or Mr. Moore went out and added a section to cover one more hearing “On October 12, 1950, the Court continued argument and rulings”—wait a minute, here is it:

“On October 12, 1950, plaintiff submitted to the  
page 8 } Court and to counsel for defendants further inter-  
rogatories addressed respectively to defendant  
United Construction Workers, Affiliated With United Mine  
Workers of America, said further interrogatories being now  
designated ‘Further Interrogatories (11)’; further interroga-  
tories addressed to defendant District 50, United Mine Work-

ers of America, said interrogatories being now designated 'Further Interrogatories (12)'; and further interrogatories addressed to defendant, United Mine Workers of America, said further interrogatories being now designated 'Further Interrogatories (13)'; and counsel for all said defendants accepted said further interrogatories which were filed in Court on October 18, 1950."

Mr. Robertson: We discussed everything and I forgot to leave the copies up here to be filed by the Clerk and I brought them up on a later date and they were marked filed on a later date and I put them in the order so if anybody would be digging through the papers afterwards they would understand why that happened.

Mr. Mullen: I haven't any question on that.

Mr. Robertson: That might help anybody that searched through the record.

Mr. Mullen: What we discussed out there that day—you were there, Mr. Moore—was to bring them down page 9 } through those the Court had ruled on. The Court had ruled on all except the last—those that have been ruled on since.

Mr. Robertson: Here is what I will do and I think it might help. I think by going back through my calendar and through these transcripts that I can recite the facts of what pre-trial conferences have been held and what was done at each one and bring it down to date like this order. In other words, my thought on this order is that so far as any lawyer in this case is concerned, to get the story of what happened, we need not go back of this. If I bring another order—

Mr. Mullen: I thought we could dispose of it all here.

Mr. Robertson: What have you got?

Mr. Mullen: I haven't got anything. I thought Mr. Lowden would write it.

Mr. Moore: It was 11, 12 and 13.

Mr. Mullen: Since the Judge ruled on those we can include those, too.

Mr. Robertson: What do you want to add on that final paragraph?

Mr. Mullen: On what date was it done?

Mr. Moore: It was a date Mr. Robertson wasn't here.

Mr. Robertson: October 24th was the date I page 10 } wasn't here. That was a Tuesday afternoon.

Mr. Mullen: Yes. Those particular ones which were filed on October 12th I see we answered all the questions in them. It was October 24th when we had the hearing.

Mr. Robertson: Why not add there: "And subject to

their aforesaid exceptions, the defendants filed their answers to said interrogatories on October 24, 1950." That would bring it down to date.

Mr. Mullen: On November 15th we filed the answers to these.

Mr. Robertson: Make that a semi-colon there and say: "And subject to their aforesaid exceptions the defendants filed their answers to said Interrogatories 11, 12 and 13 on November 15, 1950."

The Court: Do you want to put "as directed"?

Mr. Robertson: No, I don't know that we admit "as directed" as yet.

Mr. Robertson: The only interrogatories the Court has not now ruled on are 14, 15 and 16.

The Court: And they were interrogatories which were presented at the last hearing?

Mr. Mullen: Presented on November 2nd.

Mr. Bryan: I don't have the numbers of them, but they are covered in the answers filed on the 14th.

The Court: Do you want me to enter this right page 11 } now and get it behind us?

Mr. Robertson: I think it would be a good thing.

The Court: What do you want to do; all counsel mark it "Seen"?

Mr. Mullen: Yes.

The Court: All right, I am entering this as of today.

Mr. Robertson: Are you ready now on 14, 15 and 16?

Mr. Mullen: I want to take up 16 first, United Mine Workers. It is the longest one. The first question is:

"Furnish a copy of the minutes of all meetings of the International Executive Board—"

The Court: These must be numbered wrong: "In what capacity—"

Mr. Mullen: No, they are all numbered wrong.

Mr. Harris: What is the filing date?

The Court: October 12th.

Mr. Mullen: As I recall, these were presented on October 2nd. There must be some other interrogatories.

The Court: Have we acted on these?  
page 12 } Mr. Mullen: No, sir, that is what we are here today to act on.

The Court: These have been acted on, but have been numbered wrong.

Mr. Robertson: I will read them out and number them correctly later on.

The Court: The ones we had before were 11, 12 and 13. We had them a moment ago. We had better get them straight.

Mr. Moore: Here are 11, 12 and 13.

The Court: They were the ones that were added to the order.

Mr. Robertson: One is marked filed October 18th and one on the 12th.

(Discussion as to correcting numbers of interrogatories previously filed.)

The Court: Have you found the originals of 14, 15 and 16?

Mr. Moore: Yes, sir.

The Court: Now you want to take up 16 first?

Mr. Mullen: Yes.

"Furnish copies of all minutes of the International Executive Board by the United Mine Workers of America in which action was taken in connection with organizing District 50, United Mine Workers of America, sometimes called District

50, and furnish a copy of the minutes of all meet-  
page 13 } ings of said International Executive Board held  
between the date of the organization of District 50  
and October 28, 1948."

That calls for some fourteen years of minutes; in other words, minutes here at the disposal of the Court, plus a large number of additional minutes. We object to it on the following grounds:

(a) This interrogatory violates the Fourth Amendment to the Constitution of the United States for the reason that it constitutes an unreasonable search into the papers and effects of the defendant. Those minutes cannot have any possible bearing on this case; they go back far beyond the time of it. There is nothing in there relating to this case. They have complete information in the answers already filed, in the Charter of District 50 and in the Rules of District 50 and in the Constitution of United Mine Workers. The Charter says that District 50 was organized as a provisional district on order of the International Executive Board subject to the approval of the International Convention, and in the Constitution of the International Convention it was made a district.

Now that gives them all the information they want as to the creation of District 50, United Mine Workers of America.

Those minutes contain the private business, not only of the United Mine Workers, but also many concerns.  
page 14 } It is carrying out a fishing expedition to an absurd length. We have argued that quite fully before Your Honor. I think nothing is better established than that fishing expeditions cannot be approved. There must be a showing where the information desired is material to the case. The furnishing of that information would be a burden.

Our second ground of objection is that the interrogatories are oppressive and unreasonable in that they ask for an enormous number of documents, all of which precede in point of time the date of October 28, 1948, which is the first date referred to in the Notice of Motion for Judgment by the plaintiff.

. . . . .

There can be no possible excuse for going back.  
page 15 } we think, of the time the matter complained of occurred, but certainly beyond the dates of the contracts they have put in evidence with their motion. To do so is to impose an oppressive and unreasonable burden on the defendants in this case.

Our third objection is that the interrogatory constitutes an invasion of the right of privacy of this defendant and all persons with whom it did business during the long period of time between the organization of District 50, United Mine Workers of America, and October 28, 1948, and the interrogatory calls for information that is irrelevant and immaterial to the issues in this cause.

Next, the defendant respectfully submits to this Court that this interrogatory is patently propounded to the defendant in order to create prejudice and to confuse the minds of the Jury. Bringing into Court masses of minutes going back over fourteen years can have no other effect than to confuse the Jury. The whole purpose is to prejudice the Jury and the whole purpose of all of these interrogatories to a large degree and the bringing in of United Mine Workers and of District 50 is solely for prejudice. If there was a tort committed, which we deny, then the United Construction Workers if a judgment is obtained against them, are amply able to pay it. There is no reason to go beyond the United Construction Workers and it is done solely for prejudice in  
page 16 } the belief there is a feeling in this country against the United Mine Workers and its President.

Mr. Bryan: I know of my own knowledge that they are

Mr. Robertson: You say you think there is—did you say we are trying to create one or there is already one?

Mr. Mullen: What?

Mr. Robertson: You say you think we are trying to create a prejudice against John L. Lewis, or one already is existing? I didn't understand your statement.

Mr. Mullen: I say in your view there was the prejudice.

Mr. Robertson: You mean there is already one or we are trying to create one?

Mr. Mullen: You are trying to create one before the Jury.

Mr. Robertson: I just want to get your opinion. What I am trying to smoke out is whether you think there is already one and you must be specifically protected.

Mr. Mullen: I think you think so.

Mr. Allen: Mr. Mullen, did I understand you a moment ago to say any judgment we might obtain—I will assume you did not assume we might obtain a substantial one—would be good if alone against the United Construction Workers?

Mr. Mullen: Sure; it would be paid.

page 17 } Mr. Allen: If you can guarantee that, we might get somewhere.

Mr. Robertson: No, I don't think we would, as far as I am concerned.

Mr. Mullen: Said interrogatory constitutes a fishing expedition and is violative of the statutes and laws of the State of Virginia, in addition to the Fourth Amendment to the Constitution of the United States.

Next, that said interrogatory calls for an impossible task for the reason that the time between service of said interrogatories and the date of the trial is not sufficient time in which to gather together all the documents of which copies are demanded in this interrogatory and obtain copies thereof. That embraces somewhat more than that question because through all of this you will find an enormous number of documents called for and in the interrogatories addressed to the United Construction Workers and District 50 they call for, among other things, 402 newspapers.

They are our objections to this question No. 1.

Mr. Robertson: Do you think it would be well to answer each one as we go along or do you want to wait until you finish them?

The Court: I think it would be well to pass on each as we go along.

Mr. Mullen: I think so.

page 18 } Mr. Robertson: If Your Honor please, I can be very brief in what I have to say; I don't know what these other gentlemen will have to say.



Let's go back to the issues in this case and the scope of this thing has taken a wide field, but I think when you get down to the actual heart of the case it is fundamentally simple. We allege that these three different defendants are three component parts of the same organization, the United Mine Workers, or agencies of it and the problem is to pin the alleged tort of the agents or component parts onto the parent organization and the whole problem here is, one, to establish the relationship of the component parts to the principal so that you may know whether or not all three defendants and, if not, which of them, are responsible for the tort alleged in this action, and the next is to establish the commission of the tort, the wrong. Now anything that throws light on what subject is a legitimate field of inquiry.

Now, if Your Honor please, I will take these things up in the order of the first question. We are here in good faith, in dead earnestness prosecuting a suit which to us is a matter of business life or death. The Laburnum Construction Company had built up a business relationship with the third largest commercial coal company in America which promised to run for years throughout the mine fields of page 19 } Kentucky and West Virginia, and our claim is that that relationship was maliciously, illegally and wantonly destroyed by all three of these defendants. Now it is up to us to show the commission of the tort and to show the inter-relationship of these three defendants.

Now this thing—suppose it does cover a period of years. We can't say positively; they know whether it is true or not. We don't think there has been a terrible number of meetings of the Executive Board because we think it is the creature and the tool and the servant of the President of the United Mine Workers and only comes together at his call and at his pleasure and does not meet very frequently because he would rather exercise a despotic individual authority. Now that is our belief and we are entitled to find out whether that is true or not, and if it is true we are entitled to have the Jury know it and the very purpose of these interrogatories is to clear that up before we get to the trial, and what part of it is relevant or irrelevant the Court has said in each one of these preliminary trial conferences, that it is going to reserve its ruling or defer its ruling upon the admissibility and the relevancy of the evidence until we are in the progress of the trial and the Court has a better opportunity to determine as to what rulings it should make.

I say in view of that problem and in view of page 20 } that information and the materiality of it—for instance if those minutes show the transfer of dues

and funds and so-called taxes from one defendant to the other, the measure of authority of one defendant over the other, the working in collaboration and in concert and in unity of one defendant with the other, what could be more relevant to the issue in this case and wherein can the search for that truth be an unreasonable search; and the argument here is not new. It is made every time these cases come up and in the W. A. Chesterman case several years ago which Mr. Marks for our office handled for the V. C. Company they made them bring a boxcar full of documents down to have them searched over a period of months.

As a private business, I don't know of any rule of law, Your Honor, that one litigant can come in and say, "I want to see those records for the purpose that I have stated", and the person who doesn't want to do so says "You can't do that; it is private. I can't let you see it because it is somebody else's business." You don't have to accept any such *ipse dixit* as that. The Court can compel those things to come before him and determine which ones are private business and let them go out and complete the answer to that interrogatory within reasonable limits.

Oppressive and unreasonable. We allege here that they have made it impossible for this company to do construction work out there in the coal fields of Kentucky and page 21 } West Virginia. They have run them out; they have eliminated that field from them. We come now and say if we try to show the relationship between these people, that we say in good faith they have done this tort, we think that is not oppressive and unreasonable. I might cite cases from the Federal Courts and the State Courts following the statutory law of Kentucky and procedure law of Virginia and show they approve it. I have just mentioned the Virginia Chemical Company case. The admissibility of that evidence is not now before the Court because the Court is not going to rule on it until, in the course of the trial. What we are asking the Court now is to make them show their hand. It is knowledge peculiarly in their bosom and keeping which we cannot get anywhere else. We ask the Court to say, "Show your hand and then the Court in all fairness and justice, even at this preliminary stage, will eliminate everything that obviously should not have any place here, if there be such, and the Court has been doing that in answer to all of these interrogatories."

Invasion of the right of privacy. I don't want to say any more about that. You come and ask me to produce one of my business records and I say, "You can't have them because

it is private property. You want me to tell something that I did with somebody else and the Court will excuse me." Did you ever hear any such proposition as that? Are we going to let their *ipsi dixit* close the door like that? page 22 } Create a prejudice. We are not trying to create any prejudice. We are trying to uncover these facts that we have a right to uncover and if they create any prejudice, if it is admissible under the rules of law, let the chips fall where they may. We are not creating any prejudice against them. We are in here now in order that the Court may determine the scope this thing may take. We are not facing a Jury here now when the Court is trying to determine in a preliminary way the general scope of the thing which may go to the Jury.

The United Construction Workers are able to pay any judgment. I think they are, but that doesn't limit our right to get a judgment against all three defendants if we can and collect it out of one or all of them

A fishing expedition. Well, call it that if you want to. The limits of this inquiry are largely within the discretion of the Court, as I see it. These facts are within their knowledge and cannot be gotten anywhere else and we say we have a right to get them in order to prove our case, and that is purpose of the interrogatories.

Talk about an impossible task. It is not an impossible task. It does not cover any great span of years. I would be mistaken if it covers any tremendous number of meetings.

page 23 } Suppose it does. There is, however, a million dollars here at stake in this case and we think it deserves the best effort and all the time necessary to establish a just result that either the plaintiff or the defendants can put on.

I don't know what these other gentlemen want to say.

Mr. Allen: May it please Your Honor, I shall undertake not to repeat what Mr. Robertson has so well said, but to supplement it.

It must be remembered that the only reason for the admission of this evidence is the position the defendant has taken that the United Mine Workers are in no way responsible for what was done out there in Kentucky to our client by, they say, the United Construction Workers. We have a right to every particle of evidence in existence in the files of the United Mine Workers to show that defense is not valid and to prove this is a tort.

American Jurisprudence says in cases of torts:

"One who commands, directs, advises, encourages, procures, instigates, promotes controls, aids or abets a wrongful act by another has been regarded as being responsible as the one who commits the act, so as to impose liability on the former to the same extent as if he had performed the act himself. The liability in such cases is joint and several."

Then the American Law Institute in the restatement of the law of torts at Volume 4, Sec. 876, states it this way.

page 24 } "Declaring that for harm to a third person from the tortious conduct of another, a person is liable if he orders or induces such conduct, knowing of the conditions under which the act is done or intending the consequences which ensue, or knows that the other's conduct constitutes a breach of duty and gives encouragement to the other so to conduct himself."

Now that is the general law. There is an old Virginia case that never has been overruled—I believe it is called the *Daingerfield v. Thompson*, which even goes further and says in addition to the words by winks or nods or any conduct whatever encourages or induces another in the commission of a tort.

Now in view of that principle of torts involved here, we are entitled to go into the files of these gentlemen for any and everything that they have done in their close connection with the United Construction Workers or District 50. It may be a hardship on them, but they have brought it upon themselves by the defense which they have made, admitting all the time that the United Construction Workers, or District 50 is an arm, whatever that may mean, of United Mine Workers.

I am wondering if they would deny our right to examine their files and determine which of these minutes we think admissible and then ask for the production of  
page 25 } those. In view of the close connection which is admitted here and the denial of the responsibility for what United Construction Workers has done, we certainly have a right to go into their files, it doesn't make any difference how laborious it may be. If they don't want us to look over their files to determine which of those minutes have potential value in this case then give us a copy of all of them. If they want to avoid that labor, let us sit down and read them and determine which, if any, are pertinent. We certainly have that right. This is not a criminal case. They cannot plead any violation of the provision against unlawful search and seizure. We simply want information that is applicable

in a civil case that, so far as we know, is connected with no criminality in any way, shape or form. I don't see why we are not entitled to it. This is an important case, a large amount of money involved. What we allege has been done to us is a situation that is almost too bad to describe and no amount of work on their part, if it be necessary, will justify the refusal of information which shows the connection which they deny exists.

Mr. Bryan: If Your Honor please, I would like to say a few words in this connection.

As both Mr. Robertson and Mr. Allen have pointed out, it is the position of the plaintiff in this case that these defendants are three component parts of one organization page 26 } zation or each is a member and agent of the other.

That agency in our opinion is something which must be proved in order to establish liability on the United Mine Workers of America for the tort of its branches, United Construction Workers and District 50. That agency relationship has been denied by the defendants. Now what can we do to prove that the agency relationship exists.

The Supreme Court of Virginia has held many times, and I refer now particularly to the case of *Bloxom v. Rose*, 151 Va.—the Court said this:

“It is impossible to lay down any inflexible rule by which it can be determined what evidence shall be sufficient to establish agency in any given case. This is a question which must be determined in view of the facts in each particular case. Whatever form of proof is relied upon, however, must have a tendency to prove agency and must be sufficient to establish it by a preponderance of the evidence. It may be said in general terms, however, that whatever evidence has a tendency to prove agency is admissible, even though it be not full and satisfactory, as it is the province of the Jury to pass upon it.”

It happens in this case that much of the evidence which would have a tendency to prove this agency relationship is in the possession and control of the defendants and is not available to us. The laws of this State take care of a situation like that. The Code provides, in the Code of 1950, Sec. 8:320, that by means of interrogatories we can call for evidence—any evidence which we think will prove our case or page 27 } tend to prove our case and which is in the possession of the defendants which we could call for on a bill of discovery. That is the type of evidence that we have called for here.

I would like to give you a little bit of the background behind this. The defendants have taken the position this calls for evidence going back over a long period of years that could not possibly be relevant. The United Mine Workers of America was organized many years ago, back in the nineties, for the purpose of representing employees in connection with the mining and production of coal. For many years it was affiliated with the American Federation of labor. William Green, who is now the President of the American Federation of Labor, used to be the President of District 6 of United Mine Workers of America. After that Mr. Green became the manager of the United Mine Workers Journal and then became the secretary and treasurer of the United Mine Workers of America and he served in that capacity for many years. After Samuel Gompers died in 1925, Mr. Green, who was then the eighth vice-president, I believe, of the American Federation of Labor, became the President of the A. F. of L. The United Mine Workers of America and the American Federation of Labor worked in harmony for years and years.

After 1932 when President Roosevelt was elected page 28 } the National Recovery Act was passed. Under that it appears that labor organizations were given certain rights which they either didn't have or didn't exercise before and there was a tremendous growth in the organization of unions in this country. At that time some of the unions affiliated with the American Federation of Labor thought it would be better to undertake to organize employees on an industrial basis rather than on the crafts labor basis, such as had been the practice of the American Federation of Labor for many years. That suggestion was opposed bitterly by some of the members of the American Federation of Labor, which resulted in the eight vice-presidents of the American Federation of Labor grouping together and forming an organization known as the Committee for Industrial Organization. Mr. John L. Lewis, the President of the United Mine Workers of America became Chairman of that committee which afterwards developed into the union called the Congress of Industrial Organization.

At about the same time when this split occurred between the United Mine Workers of America and the American Federation of Labor, the United Mine Workers determined to have another district union which would represent employees in the coke and by-products field, and it thereupon organized this union known as District 50. District 50 has been used as the instrumentality of the United Mine Workers of America to organize employees in fields other than the mining and production of coal.



page 29 } Thereafter, the Congress of Industrial Organization decided in 1939—Mr. Lewis was President of that organization at that time—that it would undertake to organize employees in the construction industry on an industrial basis and it arranged for the organization of the United Construction Workers. Mr. Denny Lewis, or Mr. A. D. Lewis, John L. Lewis' brother, became the Chairman of the organizing committee of the United Construction Workers.

In 1942 a quarrel developed between the Congress of Industrial Organization—in the meantime Mr. Lewis had resigned as President of that union and been succeeded by Mr. Phil Murray, who was also a United Mine Worker—a quarrel developed between the Congress of Industrial Organization and United Mine Workers over what the United Mine Workers of America claimed to be attempts on the part of the Congress of Industrial Organization to raid District 50 unions. That was the bone of contention.

As the result, the Congress of Industrial Organization and the United Mine Workers split. After that the American Federation of Labor and the United Mine Workers of America re-affiliated again; I think it was about in 1946, not too long afterwards. Then another quarrel developed and again that District 50, because that seemed to be the union where the jurisdictions clashed, and the United Mine Workers split up.

District 50 is considered to be; in fact, in the publications I have looked at it is stated to be the largest single district at the present time of the United Mine Workers of America. It is what is known as a provisional district which is subject to the complete control and regulation of United Mine Workers of America. The chairman of its organizing committee was appointed by Mr. Lewis—John L. Lewis—with the approval of the Industrial Executive Board. He is an employee of the United Mine Workers of America and paid by the United Mine Workers of America. Miss Katherine Lewis, who is Mr. Lewis' daughter, was also appointed by Mr. John L. Lewis with the approval of the International Executive Board. She is an employee of United Mine Workers of America and is paid by that organization—

Mr. Mullen: I don't like to interrupt, but there is no evidence in this case of what he is saying and here are the interrogatories answering all of those questions with the answers to the questions before the Court today.

Mr. Allen: We expect to produce evidence of that and that is the background of the necessity of getting these documents.

Mr. Robertson: It is already here in these publications.



Mr. Bryan: I have looked at copies of the page 31 } United Mine Workers Journal dating back as far as I could go, which was about 1896; they were scattered copies at that time. What I have been saying is reported in those issues. That is where my information comes from. It is their official publication.

We think it is very relevant and very material to show, not only that District 50 was organized, but why it was organized, how that organization came about. The International Executive Board of the United Mine Workers of America was responsible for that.

In 1941 after District 50 had been organized, originally it had as President a man named Nelson. In 1941 the entire organization was reorganized. They had a chairman of the organizing committee, they had a special Organizing Committee, great efforts were put out to increase the membership of District 50, and there are repeated articles in the United Mine Workers Journal that everything these officers and agents had done met with the entire approval of the International Executive Board. In truth, it is just simply an arm or branch of the United Mine Workers of America, subject to its complete domination and control, just as much as if you had a servant working under you carrying out every direction you made.

We are not satisfied simply to rely on the statements in the answers which have already been filed that page 32 } these organizations are affiliated together. That may not be enough to support what we have alleged, but there is ample proof if it is made available to us to show what we allege. We are satisfied that it is there and under the laws of this State we are entitled to it and we have asked for it.

Mr. Allen: May I add one word because I don't believe we will have anything further to say?

The Court: You all say all you have to say because Mr. Mullen has the close.

Mr. Allen: I think it is important, if Your Honor please, to realize that this District 50 has nationwide jurisdiction, both geographic and industrial. In other words, its jurisdiction, both geographical and industrial, is as extensive as that of the United Mine Workers itself and it was organized by John L. Lewis after his break with the C. I. O. for the express purpose of competing with the A. F. of L. in the organization of workers. This District 50 has its office in the very same building, the United Mine Workers Building in Washington, 900 15th Street, where the United Mine Workers have their offices and John L. Lewis' brother is at the

head of it and Katherine Lewis, I believe, his sister, is treasurer, and that is how close they are together and that shows the necessity of getting documentary evidence of their co-activities.

Mr. Bryan: I would like to say one more thing page 33 } and that is about the United Construction Workers.

As I pointed out, that was organized as a separate union by the Congress of Industrial Organization. In 1942 when the United Mine Workers of American and the C. I. O. split, the United Construction Workers left the C. I. O. and requested affiliation with District 50. That was accomplished under an agreement dated sometime in June or July, 1942. I think that is right; I have seen the agreement in these publications. I don't have a copy of it with me.

At the present time District 50 and the United Construction Workers have the same top officers in Mr. A. D. Lewis and Miss Katherine Lewis and Mr. O. B. Allen, Comptroller. The Regional Directors apparently are Regional Directors for both District 50 and United Construction Workers in every case. We think that the territorial limits of each region are identical; they apparently cover the same industries. In the United Construction Workers News and the District 50 News there is a column called "The Victory Parade" which purports to set out agreements made by those organizations for the purpose of representing employees of various companies. You will find that in some cases a barber shop will recognize District 50 as a bargaining agent and in some cases a barber shop will recognize the United Construction Workers as representative of the barbers. The same thing applies to stores, to groceries, even funeral homes

There is a multitude of businesses that are covered. page 34 }

We just came back from Pikesville, Kentucky, where we took the depositions of some of the representatives of the United Construction Workers and District 50. One of the people whom we examined was Mr. Hunter—A. C. Hunter, Regional Director of District 50 and of United Construction Workers, of Region 58 of both organizations. We asked Mr. Hunter, "Will you please explain to us the difference between District 50 and the United Construction Workers?" Mr. Hunter said, "I don't know." We said, "You can't tell that?" He said, "No, I don't believe anybody knows." Actually, I think they are the same organization traveling under two different names; that is all.

All of that is information which we believe is relevant and we believe we can get information on all of that from the

minutes of the International Executive Board which controls lock, stock and barrel both organizations.

Mr. Mullen: If Your Honor please, Mr. Robertson is mistaken about there not being many minutes. They hold regular meetings and those that cover only a short period which have been brought down here and which were in Court—Your Honor saw the package that hick (indicating). Those meetings are not simply cut and dried meetings like Mr. Robertson has said.

The argument that Mr. Allen made that they page 35 } are entitled to go into all of our files is directly in the face of the decision of the United States Supreme Court which I cited to Your Honor before the Federal Trade Commission—

The Court: Is that the Kentucky case?

Mr. Mullen: No—laid down the general principle that you cannot order any such production of papers for the general effort to find something which they cannot point out, and the Virginia Statute says when the Court is satisfied that the exhibits are relevant—that is the point, and in the cases they cited in the memorandum they heretofore filed in every one of those cases it is said it must be shown that the evidence called for is material.

So that his argument is directly in the face of not only the Supreme Court of the United States, but a great mass of State cases throughout the nation, and this constitutes under those cases a fishing expedition which they have no right to engage in.

Their argument is and has been that they want all the information they are calling for to prove agency or to prove that the three are all component parts of one unit. I have repeatedly stated here that the International Union, the United Mine Workers of America, is a union having jurisdiction in the United States and Canada, that for jurisdictional purposes it is divided into thirty districts, one of which is

District 50, and that United Construction Workers page 36 } is a division of District 50, and the Constitution of the United Mine Workers, which they have, and the rules of District 50 and United Construction Workers make perfectly plain what the relation is. They now have the charter of District 50 which shows it was organized by order of the International Executive Board in September, 1936, which organization was then provisional subject to the approval of the regular Constitutional Convention of the United Mine Workers of America. It was embodied in the Constitution of the United Mine Workers of America where it was provided that District 50 was organized. They also

have the Charter of the United Construction Workers which expressly states that it is a division of District 50, United Mine Workers of America, and in the answer to Question 9 in the interrogatories addressed to the United Mine Workers it is specifically stated what the relation is.

Mr. Harris: Suppose we read the Judge that question, if you don't mind—Question No. 9. I think it will emphasize this argument better.

Mr. Mullen: This is the question:

“Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that among other objects it was the object of United Mine Workers of America to do the following: To unite in one organization, regardless of creed, color or nationality, or all page 37 } workers eligible for membership employed in and around coal mines, coal washers, coal processing plants, coke ovens and such other industries as may be chosen or approved by the International Executive Board.

“If so, state the following: During what period or periods did said constitution so provide?”

The answer to that is:

“Yes, during all the time inquired about.”

“(b) With respect to the one organization mentioned in the request quoted above were the members of District 50 at anytime between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, a part of this one organization and, if so, during what period or periods?”

The answer to that is:

“Yes, at all times inquired about the members of District 50 were a part of the United Mine Workers of America, but retained their identity, membership, rights and privileges at all times as members of District 50, or as provided in the Charter of District 50 and Article XX of the Constitution of the United Mine Workers of America.

“(c) With respect to the one organization mentioned in the language quoted above, were the members of the United Construction Workers at anytime between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949,

a part of this one organization and, if so, during what period or periods?"

The answer to that is:

"Yes, at all times inquired about the members page 38 } of the United Construction Workers were a part of the United Mine Workers of America, but retained their identity, membership, rights and privileges at all times as members of the United Construction Workers, Division of District 50, all as provided in the Charter of the United Construction Workers and the rules of District 50 and Article XX of the Constitution of the United Mine Workers of America."

I have said again and again the question of agency was not involved. You have the answer in the Charter, you have the answer in the Constitution and the rules—

Mr. Robertson: May I interrupt one minute? Do you deny any agency?

Mr. Mullen: It isn't involved.

Mr. Robertson: I can't understand you. That is the whole heart of our case. How can you say it is not involved? Do you admit it or deny it? If you admit it, it must be involved, but how can you say it is not involved when it is the whole foundation of our case? I didn't mean to interrupt you.

Mr. Mullen: We deny agency, yes, because the question of agency doesn't exist.

Mr. Robertson: Then we will have to go to it.

Mr. Mullen: I can't be an agent for myself.

Mr. Robertson: How can you say it doesn't exist when it is actually set out in the motion and that is the page 39 } basis of our case?

Mr. Mullen: You stated here today you had been trying to find out and were anxious to find out whether there was the relationship of agency between them or whether the relationship was that of all parts of one constituent organization, and we have answered it: They are parts of one constituent organization.

Mr. Robertson: And you deny the existence of agency and we assert it, and that is the main issue in the case.

Mr. Mullen: But, Your Honor, they have their answer there in the Charter of the United Mine Workers of America.

"The United Mine Workers of America hereby establishes a provisional District No. 50, under the conditions herein set forth, to be known as Gas and By-Product Coke Workers, and

to have jurisdiction over workmen employed in and about plants processing coal within the United States and Canada; and for the establishment of such conditional district, this Charter is issued to James Nelson, President, James Nelson, Acting Secretary-Treasurer, their successors in office and associates in membership.

"The said district, and all sub-districts and local unions established therein, shall be subject to the jurisdiction of the International Organization United Mine Workers of America and may adopt constitutions and by-laws not in conflict with the Constitution of the United Mine Workers of America and this Charter of affiliation.

"Said district, its members and subordinate branches, shall acquire no rights in the fund, or to participate in the election or conventions of the United Mine Workers of America, but shall have their own autonomy with respect to their elections, conventions and wage negotiations.

"The district and its members shall pay the International Organization United Mine Workers of America dues and assessments, as provided in the International Constitution, and shall receive the support and guidance of the International Organization in matters of policy, administration, organization and wage negotiations, as its International Executive Board may approve.

"All questions of interpretation arising under this Charter shall be determined by the tribunals set up in the Constitution of the United Mine Workers of America, and this Charter of affiliation shall be submitted for approval to the next regular constitutional convention of the United Mine Workers of America.

"By order of the International Executive Board.

"Dated this 1st day of September, 1936.

(Signed) JOHN L. LEWIS, President.

United Mine Workers of America

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(Signed) THOMAS KENNEDY,

Secretary-Treasurer,

United Mine Workers of America."

There is the Charter. The relation of one of these organizations to the other is clearly set forth in that and in the specific answers we have put in here and that is no basis for their asking for these further minutes because we have answered what they have claimed all along was the basis of their inquiry, namely, to find out whether it was the relationship of agency between the United Construction Workers and Dis-



trict 50 and the United Mine Workers or whether they were one or parts of one union.

Mr. Allen: Mr. Mullen, I didn't quite understand some of your statements a moment ago. I would just like to ask you one question to see if I understand the position you take.

You say that there is no question of agency involved, as I understood you, because you couldn't be an agent for yourself, meaning, I suppose, that each one of these organizations is a component part of one organization. Now if that is what you mean, do you go further and mean that being so, one part of the organization—one of the component parts of the organization may do something in the prosecution of the rights of the workers without responsibility on the other part?

Mr. Mullen: I haven't made any statement on page 42 } that point; I am not going to. I think that is only a part of a very large question which cannot be answered yes or no.

Mr. Allen: Of course, your charter may say one thing and your actions make you agent anyway.

The Court: Gentlemen, the Court will require the defendant to answer the first part of Question 1 in Further Interrogatories 16, which reads as follows:

"Furnish a copy of the minutes of all meetings of the International Executive Board of United Mine Workers of America in which action was taken in connection with organizing District 50, United Mine Workers of America, hereinafter sometimes called District 50."

As at present advised, the Court declines to require the defendant to answer the second part of the question which reads as follows:

"and furnish a copy of the minutes of all meetings of said International Executive Board held between the date of the organization of District 50 and October 28, 1948."

Mr. Robertson: I just want to ask one question. How are you going to tell whether they have complied with the order of the Court, or not?

The Court: That is something we will have to cross later. I think the gentlemen will deal with the Court fairly and are going to answer the question as far as they can.

Mr. Robertson: I have no doubt about that, but I have very decided doubt that some of the gentlemen page 43 } they represent will do so.

Mr. Mullen: Mr. Robertson has no basis for that statement.



Mr. Robertson: Yes, the statement of Mr. Tom Rainey in Pikeville, Kentucky and Mr. Hunter and some others.

Mr. Mullen: You have the fullest answer you need in all of these interrogatories.

Mr. Robertson: I challenge that statement.

The Court: If the Court requires the defendants to produce the minutes, I am satisfied that Colonel Harris and the firm of Williams and Mullen are going to cooperate.

Mr. Robertson: I realize that. I am not casting any reflection on them, Your Honor.

Mr. Mullen: The next question is:

"Who were the members of the Policy Committee or Conference Policy Committee of United Mine Workers of America between the date of the organization of District 50 and August 4, 1949, and who have been the members of such committee since August 4, 1949; when and by whom was each of these persons appointed or elected a member of such committee; and during what period or periods did each serve as a member of such committee?"

And the third question is:

"For what purpose or purposes was the Policy Committee or Conference Policy Committee of United Mine Workers of America organized, and since the date of the organization of District 50 what have been the powers of such committee?"

page 44 } And the fourth question is:

"Furnish a copy of the minutes of all meetings of the Policy Committee or Conference Policy Committee of United Mine Workers of America held between the date of the organization of District 50 and August 4, 1949, and also held since August 4, 1949."

Mr. Allen: Just a minute. Just before we get into a discussion of that I think we should except to Your Honor's ruling in refusing to require the defendant to furnish—

Mr. Robertson: I think that is understood.

The Court: I understand you except to the Court's action in refusing the last part of the question and the defendants except to the granting of the first part.

Mr. Robertson: The way we have understood it, everybody excepts to all rulings of the Court.

The Court: All adverse rulings. Is that the understanding?

Mr. Mullen: Yes.

Mr. Allen: And the grounds are those stated in the oral argument here before Your Honor.

Mr. Robertson: No, we have gone further than that; that the door is wide open for everybody to reserve every right, whether specified or not.

Mr. Allen: The Court of Appeals says that won't do.

Even though you have that understanding, you page 45 } can't assert a ground you have not stated.

Mr. Robertson: I don't say in the Court of Appeals; I said to elaborate on them and to amplify them before this Court hereafter.

Mr. Allen: Still, the Court of Appeals says the Judge must have the benefit of them.

Mr. Robertson: I think in fairness to these gentlemen, I think I should state what my understanding is, that everybody here is reserving to the utmost all of their legal rights to every adverse ruling of the Court and at any time while this case is before this Court they can specify their reasons and elaborate on them just as much as they desire to do. That would mean before we get to the end of this trial this Court has got every argument in detail that all sides can make and that is in the record for the Court of Appeals. That has been my understanding all the way through.

Mr. Mullen: That is my understanding of it.

Mr. Allen: The point I was making was this. It did not concern the understanding so much, but so that nobody may find themselves in a hole when they get through, the Court of Appeals has said that though we have an agreement with Your Honor and with all counsel that we will just go along and except and we can state our exceptions after the case is all over, those objections have to be stated to page 46 } Your Honor before you lose control of the litigation. The Court says you must have the information. That is the point I was making.

The Court: Are you gentlemen satisfied with the way we are proceeding?

Mr. Robertson: I am satisfied, Your Honor.

Mr. Mullen: I am satisfied.

Mr. Harris: I think we are protected, Judge. I think the reservation of finality of rulings that Your Honor made sometime back on some of the questions and what we are doing now under the stipulation Mr. Robertson has stated—I think we are protected.

The Court: That is a matter for you gentlemen to be concerned with.

Mr. Harris: I haven't read the case Mr. Allen mentioned and if you give me the citation I will check it up.

Mr. Robertson: It will all be in the record before we leave here because we have to make a complete argument to Judge Snead before Judge Snead can rule and there it is in black and white in the record.

Mr. Mullen: We have all stated very fully our objections in the argument on the interrogatories. Now the question coming up the second time on the question of the right to introduce, the relevancy of the evidence—

page 47 } The Court: At the trial.

. . . . .

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. . . . .

Mr. Mullen: Now I read those questions. The Policy Committee is a committee that meets on the question of the contract between the United Mine Workers and the mining employers.

Mr. Robertson: Repeat that again because in all my study I have never been able to find out what the Policy Committee is and this is the first moment we have heard you say it.

Mr. Mullen: It is a committee called into session to determine on the question of the contracts that the United Mine Workers make with employers and on the question of whether they will strike to enforce it, and so forth.

It would be utterly impossible to comply with this. There are 300 members of it. They are elected from three hundred different unions. No record is kept in the home office of who goes to each meeting. They come there, having been elected; they vary constantly. There would be no way of doing that except to write to three thousand districts and ask them to go back fourteen years for each man and find out who was on the Policy Committee, who they elected, when they elected him, and so forth. It has nothing to do with this case. It is a United Mine Workers Committee engaged in backing up the officers in their controversies with the mine owners.

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Mr. Bryan: What is the purpose of the Policy Committee?

Mr. Mullen: It is to confer with the officers of the company on the question of the contracts to be made with the mine owners, as to the question of rates and so forth.

Mr. Bryan: Does it have any power?

Mr. Mullen: Advisory.

Mr. Bryan: Advisory, only? Is District 50 represented on the Policy Committee?

Mr. Mullen: I don't think so. I don't know.

Mr. Bryan: You are not sure?

Mr. Mullen: I don't think so. That certainly has nothing to do with it and it would take an interminable time to get that; couldn't get it in time for the trial of this case.

Mr. Bryan: It might very well be the question as drafted is not right in view of what you say, but I have found repeated references to the Policy Committee or Conference Policy Committee—I don't know which the correct name is—

Mr. Mullen: Conference, I think.

Mr. Bryan: —as to actions taken by that committee. I have assumed it was a rather large committee. I know positively that action has been taken by the Policy Committee has some authority with reference to the affairs of District 50 and I believe that District 50 is represented on the Policy Committee. I believe that the Policy Committee has some authority with reference to the affairs of District 50 and the United Construction Workers.

This is just another example, Judge, of what we are up against where all of the information really is in the possession of the defendants. It wouldn't be a very hard job for us to find ourselves going into trial without the information in advance and without the means of proving satisfactorily what we want to show. If the defendants can force us into that sort of position, it would be very advantageous to them. It is a shame I think we have to go into this multitude of questions the way we have, but this is just not the usual case.

The Court: Do you have any objection to answering 3?

Mr. Mullen: "For what purpose or purposes was the Policy Committee or Conference Policy Committee of United Mine Workers of America organized, and since the date of the organization of District 50 what have been the powers of such committee?"

Mr. Harris: I don't think we really object to that, Judge.

Mr. Bryan: Could you answer Question 2 if it page 51 } were revised to state generally what is the Policy Committee or Conference Policy Committee and whether or not District 50 or United Construction Workers have been represented on that committee? That would release you of the necessity—

The Court: That would be a general question. I believe that would be a fair question.

Mr. Mullen: I have no objection to that.

The Court: Get it worded like you want it, Mr. Bryan.

Mr. Bryan: I would word it this way—

Mr. Harris: I suggest you are combining 2 and 3 in the way you are talking.

Mr. Bryan: No, I will leave 3 the way it is and have No. 2 read like this:

The Court: Suppose we recess for five minutes and you can word it and consider combining 3 with it.

(A recess of five minutes was taken.)

Mr. Bryan: I haven't written it all out, but I think I know what to say. I would make the question read thus:

"When and upon what authority was the Policy Committee or Conference Policy Committee of United Mine Workers of America first organized? State generally the position of the Policy Committee or Conference Policy Committee. Has District 50 or United Construction Workers been  
page 52 } represented on this Policy Committee or Conference Policy Committee?"

The Court: Will that take into consideration—

Mr. Bryan: Just a second, sir. I might put another question:

"Is there any difference between the Policy Committee or Conference Policy Committee? If so, state what is the difference."

Mr. Harris: I don't see any harm in that.

Mr. Mullen: No, I have no objection to that.

The Court: Then you want Question 3, too?

Mr. Bryan: Yes.

Mr. Mullen: We will answer 3 also.

The Court: 2 as amended, and answer 3. Now 4 is next.

Mr. Pollard: Your Honor, I would like to ask about this third amendment to Question 2:

"Has District 50 or United Construction Workers been represented on this Policy Committee or Conference Policy Committee?"

How about a time as to that representation? Do you mean ever?

Mr. Harris: I think that is all right. Have you got the question pretty accurately written out?

Mr. Pollard: Yes, sir, I have it.

Mr. Harris: Because I didn't try to write it.

The Court: Now 4: "Furnish a copy of the page 53 } minutes of all meetings of the Policy Committee or Conference Policy Committee of United Mine Workers of America held between the date of the organization of District 50 and August 4, 1949, and also held since August 4, 1949."

Mr. Mullen: In the first place, I don't think there are any; and if so, they were sketchy.

Mr. Robertson: Maybe we can save time on that.

Mr. Bryan: I think we might say this:

"Furnish a copy of the minutes of all meetings of this committee pertaining to District 50 or United Construction Workers."

We are not interested in rates set for coal, and so forth.

Mr. Harris: That is rather broader, I think, than Mr. Bryan really intends. District 50 has dealings with lots of different industries and it might be a question with reference to some wholly unrelated industry that had come up and in not way related to the construction industry.

Mr. Robertson: We want to show the exercise of the power.

Mr. Bryan: That is a very important point.

Mr. Allen: And control.

Mr. Bryan: It is not only the fact that the United Mine Workers of America have the right to control and regulate District 50 and United Construction Workers, but we think it is very essential to show the manner in which that page 54 } control has been exercised.

The Court: How did your question read as re-phrased?

Mr. Bryan: The question as reframed would be this way:

"Furnish a copy of the minutes of all meetings of the Policy Committee or Conference Policy Committee of the United Mine Workers of America held between the date of organization of this District 50 and August 4, 1949, and also held since August 4, 1949, insofar as those minutes pertain to District 50 or United Construction Workers."

Mr. Mullen: If you limit that to United Construction Workers, probably that would be all right.

The Court: What about that?

Mr. Robertson: That boils it down to the two defendants; exclude everything else.

Mr. Bryan: After all, United Construction Workers has

been admitted in the answers to the interrogatories as a division of District 50, but the principal representatives and officers that took part in the trouble in Breathitt County, Kentucky, were officers and representatives of both United Construction Workers and District 50.

Mr. Harris: Mr. Mullen, do you see any particular objection to that as reframed?

Mr. Mullen: No, I don't because I don't think there are any minutes.

Mr. Robertson: You have no objection to 5, have page 55 } you?

Mr. Harris: We don't see the materiality of it, but there is no reason to get into a row over it, Judge.

The Court: All right, you will answer 5. How about 6; any question about No. 6?

Mr. Mullen: This goes back again over fourteen years. I don't want to raise any particular objection. We objected to it generally.

Mr. Robertson: That couldn't be very much. If it comes up it would be very little.

Mr. Mullen: They were made a provisional district under their charter and then that was ratified by the Constitutional Convention, but I know there hasn't been any such request as this.

The Court: All right, suppose you answer 6. How about 7?

Mr. Robertson: You have no objection to 7, have you?

Mr. Mullen: We don't know anything about that.

Mr. Robertson: You could find out real easy.

Mr. Bryan: If they can't answer it, we can prove it another way.

The Court: All right, answer 7.

Mr. Harris: We don't know and he doesn't page 56 } insist I believe.

Mr. Bryan: No, we would like for you to answer if you can, but if you want to take a trip to West Virginia and take some depositions—

Mr. Robertson: I don't want to go out there any more.

The Court: Answer it if you can. That is the best you can do.

Mr. Robertson: You don't object to 8, do you?

Mr. Mullen: I don't reckon we want to object to 8.

Mr. Harris: That is all right.

Mr. Mullen: And that would cover No. 9.

Mr. Robertson: There can't be any objection to 9; that is easy.

Mr. Mullen: I say that leaves 9. When you say furnish



a copy of the minutes of the meetings of the International Executive Board taking action on each such request you mean the resolutions in the minutes taking action; you don't mean in the whole minutes?

Mr. Robertson: Just the part pertaining to it. There might be a recital of fact and then the resolution.

Mr. Mullen: All right.

Mr. Bryan: Before we leave that question I would like to get something clear in my own mind. Is it the position of the defendants that District 50 and United Construction Workers are autonomous unions?

Mr. Harris: I can't answer that question. You have asked and we are going to give you the answer in writing whether they are, or not.

Mr. Mullen: The Charter states it is autonomous on certain points. I read it here today.

Mr. Robertson: I don't know what autonomous means.

Mr. Harris: I don't, either.

Mr. Robertson: I don't know what it means when the Constitution says you have got to elect your members of the International Executive Board and your answer says some of them are appointed. I think that means the fine Italian hand, but I am afraid to say so because you will get mad.

Mr. Harris: I haven't been angry to the slightest degree since I came to Virginia.

Mr. Robertson: What is the date on which we will get these answers?

The Court: What about 14 and 15? What set do you want to take next?

Mr. Mullen: No. 15.

Mr. Robertson: You don't object to any of those, do you?

Mr. Robertson: You don't object to any of those, do you? page 58 } Mr. Harris: Is 15 United Construction Workers or District 50?

Mr. Mullen: District 50.

Mr. Robertson: All of your objections are substantially the same, aren't they?

Mr. Mullen: Not necessarily. The first one is:

"Furnish a copy of the issue of 'The District 50 News', the official publication of District 50, published under date of October 20, 1941, and known as Volume I, No. 1 (also known as Volume IV, No. 42), and furnish a copy of all subsequent issues of said The District 50 News to and including the issue

published under date of April 15, 1948, and known as Volume 7, No. 11."

And the second question is:

"Furnish a copy of the issue of 'The News', the official publication of District 50 and United Construction Workers, United Mine Workers of America, published under date of May 5, 1948, and known as Volume I, No. 1, and furnish a copy of all the subsequent issues of said The News to and including the issue published under date of October 20, 1950, and known as Volume III, No. 20."

I might say at the same time that they called for in the next interrogatory addressed to United Construction Workers:

"Furnish a copy of the issue of 'United Construction Workers News', the official publication of United Construction Workers, published under date of August 1, 1940, page 59 } and known as Volume I, No. 1, and furnish a copy of all subsequent issues of said United Construction Workers News to and including the issue published under date of April 20, 1948, and known as Volume IX, No. 8."

That calls for 402 papers to be furnished. In the first place, we don't know that we have them. They have got to be dug down in old dusty files to be found. If we have a file—we know we had it back to a certain date—if we have a file of all of those papers, we are willing to make them available to them to read and take out anything they want to. We don't think 402 newspapers should come in here to encumber this record. If they find any items in there that they think are pertinent, then they can offer them in evidence and the Court can pass on them, but to furnish 402 papers is unreasonably burdensome, and we make the same objection as I made in the beginning to introducing the minutes of the Executive Board in the argument heretofore under the United Construction Workers, United Mine Workers, but they say they are hunting for information.

The Court: Is that satisfactory, to put the papers at your disposal?

Mr. Bryan: Where will you put them at our disposal?

Mr. Mullen: We prefer to do it in Washington, if we have them—the only permanent file they kept.  
page 60 } Mr. Bryan: I have spent days in Washington, Your Honor, at the Congressional Library and also

at the Library of the Department of Labor. They have very complete files; they have in bound volumes these official publications of the defendants. There are three publications involved. First, is the United Mine Workers Journal. After District 50 was organized a page in the United Mine Workers Journal was dedicated to District 50 under a headline called District 50 News.

Thereafter, in about 1940 or '41, District 50 commenced to publish its own publication known as District 50 News. At about the same time, I think in 1940, the United Construction Industrial Organization, commenced to publish its official paper known as the United Construction Workers News. After United Construction Workers and District 50 became affiliated, District 50 being taken into—I mean United Construction Workers being taken into District 50 as a division of District 50, United Construction Workers continued to publish its own paper known as the United Construction Workers News. That continued down to 1948 when the two papers, I presume for economic purposes, were consolidated into one known as The News.

There are many articles in those papers which have a direct bearing on the control which has been exercised page 61 } by United Mine Workers of America over these two subordinate branches and a bearing on the manner in which that control has been exercised. We cannot withdraw those papers from the library. It is possible to have them photostated, but that would be an enormous expense. There are many portions of the papers that have absolutely nothing to do with this case and wouldn't be in evidence, but there are many articles in the papers which are relevant and material.

The Court: As I understand from counsel for the defendants, they are willing to put all the papers they have that you have requested at your disposal to look at and if there is anything you think is relevant, they will consent that you offer it in evidence.

Mr. Bryan: Will you bring them here to Richmond?

Mr. Harris: But we don't waive our objection to it at the time it is offered.

Mr. Robertson: Of course not.

The Court: But the manner in which it is offered you raise no objection?

Mr. Harris: I think we can do that.

The Court: In other words, you can introduce it in evidence—offer it in evidence.

Mr. Robertson: Suppose he would go to Washington—you would make these papers available to him, he would go to

Washington, examine them, think a part was page 62 } relevant and have a typewritten copy of it made with a reference to the volume and number—you, of course, could satisfy yourself if you wanted to that was a correct copy—then you would let that copy be introduced?

The Court: As I understand, they won't object to the manner in which it is introduced, but reserve the right to object to it—

Mr. Robertson: As to the substantive material.

Mr. Harris: As we technically call it, we won't object to it on the ground no proper foundation had been laid as to the accuracy of the exhibit, but any question as to the admissibility we would reserve.

The Court: But if they were included in the interrogatories, I take it they have a right to offer the interrogatories and you would have a right to object to the admissibility. I think that ought to be clarified.

Mr. Bryan: Will the same apply to the United Mine Workers Journal? That is not covered in this particular interrogatory.

Mr. Mullen: That hasn't been called for.

Mr. Harris: You are getting us into an uncharted sea if you ask for something the interrogatories don't cover.

Mr. Robertson: It is an official publication.

Mr. Bryan: We can go back and make another one, if you want to, but the same principle applies.

page 63 } Mr. Harris: I don't think with as long a record as we are going to have we ought to start on oral interrogatories from the other side.

Mr. Robertson: All right, we have a man here to take them down. I am trying my best not to have any more interrogatories or depositions.

The Court: I understood as far as you knew this would be the end of the interrogatories.

Mr. Robertson: Yes, sir.

Mr. Mullen: Of course, we could object to the interrogatories calling for those on the ground that it has been disclosed that he has access to the source of information called for and interrogatories are intended to be produced where that is the only way they can get the information. Now it has been disclosed that those records are in the library where they can read them, but we hadn't made that point. We are willing to have them at your disposal and if you find any item that is pertinent if he wants to make a longhand or typewritten copy and give us a chance to compare it and introduce it, I see no objection to that.

Mr. Robertson: Of any of the publications produced we do so in time for you to check them and you preserve all your rights. If he does all the work, I don't think you would object to it.

Mr. Harris: Mr. Mullen, maybe some of those page 64 } after we consider it in Washington we could get sent to your office.

Mr. Mullen: We had difficulty finding even the limited number you called for before and we know all of these earlier ones way back there if in existence are buried in dust and everything else.

Mr. Robertson: Suppose he locates this thing up in the Department of Labor and gives you the reference. You know if they are in the Department of Labor, they are correct.

Mr. Mullen: All right, give us a copy of the reference so we can compare it or if we haven't got them we will go to the Department of Labor and compare them.

Mr. Bryan: There are some we will probably want to have photostatic copies made of, but I would like to hold that to a minimum as far as possible.

The Court: Then I understand these gentlemen will co-operate with you in that respect.

Mr. Bryan: Who could we see in Washington? The editor?

Mr. Harris: I think Mr. Hought.

Mr. Robertson: Most newspapers are bound up in volumes for certain periods and if they are available and sent down here, it would be very much easier for everybody.

Mr. Mullen: We will see what we can do about that.

Mr. Harris: Just to make things a little hard page 65 } on the other side we are not interested, Judge.

Mr. Robertson: Sir?

Mr. Harris: Just to make things hard on the other side, we are not interested.

Mr. Allen: I am thinking of the mechanics of this thing and to keep this record down and to keep as much volume out of it so far as the actual physical documents are concerned. If these gentlemen—I am just making this as a suggestion—if these gentlemen would agree for us to see these various papers; say, for instance, take Question No. 2 of Interrogatory 15, furnish a copy of the issue of the News, and so forth—somebody from the office of some of counsel for the plaintiff or Mr. Bryan could go there to the Department of Labor or to the newspaper office or the office of the editor of these papers and read the article they want introduced in evidence, giving a description of it, right into one of these Audograph machines which they use down in your court in taking testi-

mony of a witness, and then just play it to the Jury, it would be perfectly plain.

Mr. Robertson: I think we ought to consider the cost we are put to on these various interrogatories.

Mr. Harris: I can't agree to that, anyhow.

Mr. Allen: You might let me get through.

Mr. Harris: You have said enough for me to object.

Mr. Allen: No, I am coming to what you said.  
page 66 } Then we can bring that machine down here and have everything that we have read into it transcribed and show a copy to them and let them check exactly what we are going to offer in evidence and it would save bringing all those papers down. They will have it, they can compare it with the papers. We could get the copies in that way into court better.

Mr. Mullen: I don't care how you get the copies.

The Court: Just so it is a true copy.

Mr. Harris: I do object to him saying anybody from our side going down to the Department of Labor and help pick them out.

Mr. Allen: No, I didn't say that. I said we could go to the office of your editor or the Department of Labor and get correct copies of the articles we wanted and read them into the machine.

The Court: The articles you are interested in, bring the machine to Richmond, have it transcribed, give a copy to counsel for the defendants and let them check with the originals in Washington to see whether or not—

Mr. Robertson: You will wind up with a whole lot of expense and three times as long a record as if you went up there with Mr. Williams and had him write them out.

The Court: As I understand, you gentlemen are not concerned how we get them transcribed, but whether they are accurate?

page 67 } Mr. Harris: That is right.

The Court: That is a matter for counsel to work out.

Mr. Bryan: You will have the copies of the papers here at the trial available?

Mr. Harris: I don't see how we can overcome that. Whatever the Court tells us to have, we will have.

Mr. Bryan: We would want the Jury to see some of them.

Mr. Harris: We will object to showing them the whole newspaper.

The Court: Why not look at the papers and see whether there is anything in there you would want?

Mr. Bryan: I have seen them and there is.

The Court: We will cross that bridge when we come to it.

Mr. Bryan: We have no way to show that until we get them here.

The Court: They will make them available to you, I understand.

. . . . .

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. . . . .

Mr. Mullen: And there is no objection to 3 and no objection to 4.

Mr. Harris: This is on 15?

Mr. Mullen: Yes. 14 we can dispose of in a few seconds.

Mr. Allen: That is the same thing.

Mr. Mullen: Yes, we were discussing the newspapers a moment ago.

Mr. Robertson: So the same as 15 for 14?

page 69 } The Court: The same agreement and ruling on 14 as 15, is that correct?

Mr. Harris: 3 is where that applies, isn't it?

The Court: Furnish a copy of the United Construction Workers News, and so forth.

Mr. Robertson: Judge, the other two things I have on my notes here for today—

The Court: Have we finished with these interrogatories?

Mr. Harris: I defer to Mr. Mullen. I think we have finished, but I haven't got the documents.

Mr. Mullen: I think that is all right.

The Court: Now we are through with the interrogatories. Before we get to the next item on your agenda, steps will be taken to embody what has been done here in an appropriate order?

Mr. Robertson: I will undertake to prepare that.

The Court: To bring us up to date.

Mr. Robertson: The only two other things I have for argument today, and in view of what the Court said I don't think you are ready to act on one. First, what is the date for the answer to these interrogatories?

The Court: What would be a reasonable date in your opinion to answer these interrogatories, 14, 15 and 16?

page 70 } Mr. Harris: I am trying to figure. It is somewhat difficult, Judge, for me to speak for those lawyers up there that have to check because they



have other court engagements that have tied them up. It is not our disposition to delay it.

Mr. Robertson: What do you think about the 15th of December?

Mr. Mullen: I was going to suggest the 20th. That would be a little more than a month.

The Court: Make it the 20th of December.

Mr. Robertson: I would like to ask one more thing: I don't know whether they want to do it. Do you think it wise to try and get one other date for one further pre-trial conference to get out of the way any other preliminaries we can before the trial date?

The Court: If you gentlemen think that is necessary.

Mr. Robertson: I have nothing else in mind, but I think it would safeguard everybody and the Court.

The Court: How would December 11th suit you gentlemen?

Mr. Harris: I am tied up in a trial on that date.

Mr. Mullen: My idea on that—we would know more after we have worked on this case and I would think early in January along about the 6th or 7th would be better for that.

Mr. Robertson: I think that is all right. I think page 71 } it ought to be early enough if anything comes up that requires further action on anybody's time, you have enough time to do it.

Mr. Mullen: I don't know what there is to come up.

Mr. Harris: Couldn't there be a little flexibility in that? I have another case suing the same defendants for the same amount of money to defend in the Federal Court in Birmingham and have got a pre-trial hearing set and I don't know what that Judge is going to do. Down there the Federal Court pays no attention to a State Court any more than if they weren't in existence. You can be in a trial of a case in a State Court and it is no excuse for not showing up in the Federal Court.

The Court: Do you have any idea of when that pre-trial conference will be heard?

Mr. Harris: I think in the next ten days. That is the reason I would suggest it be in January; all of us would know whether there was anything to bring up.

Mr. Robertson: Why not fix a tentative date in the first week in January?

(A discussion off the record, as to date, which was finally fixed as Saturday morning, January 6, at nine-thirty at the City Hall.)

page 72 } Mr. Robertson: The other two things I have got here—one, the ruling of the Court about the minutes of the United Mine Workers which have heretofore been submitted to the Court—one was the consolidation of the causes and I understand you want a memorandum on that, and the other was the disposition of the ruling of the Court on the minutes of the United Mine Workers which have been submitted to the Court.

The Court: The Court hasn't had an opportunity to call for them. I will have to get a break to read them and I assume if I want them that I can get them.

Mr. Mullen: Any time. They are locked up in the lock box at the bank.

Mr. Robertson: If it will be any assistance I will be glad to read them.

Mr. Mullen: We don't require that sort of assistance.

Mr. Bryan: Some of the answers they have made to the interrogatories I don't believe are satisfactory.

Mr. Harris: Can't we take them up on the 20th?

Mr. Robertson: That may be too late. Why not take them up now?

Mr. Bryan: As you know, there are many questions and many answers and I have been making an analysis of them but there are some that strike you right in the face that I think would be very important and whether the answer is due to a misunderstanding of the question or the Court's ruling on the question or what it is I don't know, but it just doesn't make sense and I think that ought to be taken up preliminarily now if we can do so.

Mr. Mullen: You took the position that when we had objection to your answers the time to take that up was at the time of the trial and we weren't allowed to argue that.

Mr. Bryan: It is a very different situation I think in our particular case. You will have an opportunity to prove what you want, but in our particular case if we don't get this straight in advance and the United Mine Workers of America doesn't have people down here available to answer the questions, then we just won't have any proof.

Mr. Mullen: You think we are not going to have witnesses?

Mr. Robertson: You said you weren't going to obligate yourself to have anybody here.

Mr. Mullen: Certainly not obligated to you.

Mr. Robertson: That is why I think we have got to get them finished.

Mr. Mullen: We are not going to let the case go by default. We will have plenty of witnesses here.

Mr. Robertson: I don't want any gifts from Greeks.

Mr. Bryan: Look at out at Pikeville; we were page 74 } asking questions of Mr. Hunter and Mr. Hunter had a very funny memory, he just didn't know—"I don't know; you will have to go to Washington." That is what they all tell you.

Mr. Robertson: I don't see why we can't go with them right now to the extent Mr. Bryan is ready for them. I don't want any more interrogatories if I can help it, I don't want any more depositions if I can help it, I don't want any more pre-trial conferences if I can help it, and the further we go along today the nearer we finish the thing.

Mr. Harris: I didn't want to have to interrupt Mr. Robertson, but I want to say in behalf of Mr. Hunter that I didn't observe any convenience of memory. He wasn't instructed to forget anything; he was put on up there to tell whatever he knew. There may be a difference of opinion between—

Mr. Robertson: I want to say in fairness to Colonel Harris I certainly don't think Mr. Hunter needed any instructions.

Mr. Harris: That is a difference of opinion we will argue to the Jury.

Mr. Mullen: We are filling up the record now with things that are not in the case.

The Court: It is agreeable to me to be back at two-thirty.

Mr. Robertson: Let's get rid of them as far as page 75 } we can.

Mr. Harris: I would like to finish today.

The Court: Let's go on until ten minutes to one and then recess; I have some matters I have got to attend to that will take me half an hour after lunch.

Mr. Mullen: The questions have been answered as fully as we know how. I don't see where we would get anywhere.

Mr. Harris: I have no answer of District 50 or United Construction Workers; I have the answer of United Mine Workers. Do you mind taking up United Mine Workers first because that is the only one I have a copy of?

Mr. Bryan: I don't have them in that order, Colonel; they skip. I am only going to take up a few questions because that is all I am in a position to take up at the moment. The first question, looking at Interrogatory No. 4—

The Court: The United Mine Workers of America?

Mr. Bryan: Yes, sir.

The Court: I haven't the question.

Mr. Robertson: Which question?

Mr. Bryan: 19 on page 6.

Mr. Robertson: Do you want me to read the question?

The Court: Yes.

Mr. Robertson: "19. Who were the members page 76 } of the International Executive Board of United Mine Workers of America between the dates October 28, 1948, and August 4, 1949, and who have been members of said International Executive Board since August 4, 1949; when and by whom were each of these persons appointed or elected a member of said Executive Board; during what period or periods between the dates October 28, 1949, and August 4, 1949, also since August 4 1949, did each serve as a member of said International Executive Board; what districts or subdistricts or branches or subordinate branches of the United Mine Workers of America did they respectively represent on said International Executive Board; and what were the locations of their respective offices?"

Mr. Bryan: The answer as submitted appears to be complete in that it lists the names of the Board members, it shows the districts that they represent; lists their addresses and shows the dates on which they were appointed or elected. The answer is defective in that it does not show by whom they were appointed or elected. In our opinion, that is a very material point. We do not have information yet as to why some of these people were appointed and some were elected. Before we are through we expect to find out more about that. I think each one of these people who were shown as having been appointed was appointed by the International President with the approval of the International Executive page 77 } Board. The answer does not say so, however.

The Court: Did the question ask for that?

Mr. Bryan: Yes, sir, the question says when and by whom was each of these persons elected or appointed a member of the International Executive Board. They were supposed to answer that and they haven't answered it. In the case of the members who were elected, I suppose they were elected by their respective districts. However, we don't know that. They may have been elected by the Board or may have been elected by the convention or may have been elected in some other way. All of that goes to the matter of the control exercised by the International Union and the Board over these districts.

The Court: In other words, you want to know by whom they were elected or appointed?

Mr. Bryan: Yes, sir, and they did not furnish that information and we think it is quite important.

The Court: Let me see what these gentlemen have to say about that.

Mr. Harris: It is a little more work for the International.

The Court: It does appear to the Court that counsel over-

looked stating in the answer to this question by whom these gentlemen were appointed or elected.

Mr. Mullen: We thought when we said elected or page 78 } appointed they would know the elections are by the districts. The Constitution provides elections shall be by districts. When there are no elections by districts, then they are appointed by the Executive Officers.

Mr. Robertson: That is just what we are trying to find out. We read the Constitution about elections and it just looks like to us they flouted the Constitution.

Mr. Bryan: All of that relates to another important question.

The Court: I don't know that it is necessary to go into that. The question is the sufficiency of the answer to the question.

Mr. Harris: As I understand, we have to answer it and we don't take any exception to Your Honor's ruling.

The Court: In other words, you will file an additional answer to this question stating by whom these gentlemen were appointed or elected. That ought to dispose of that question.

Mr. Harris: We will give you all we have. It may be some of it we haven't got.

The Court: What is the next question?

Mr. Bryan: The next question will be Question 2 in Interrogatories 4.

Mr. Robertson: I will read the question:

"Furnish a copy of the charter, constitution rules, laws, and by-laws of the United Mine Workers of America page 79 } in effect between the dates October 28, 1948, and August 4, 1949, together with a copy of all changes and revisions made in the same since August 4, 1949."

The Court: We are still concerned with the answer of the United Mine Workers of America to the interrogatories?

Mr. Bryan: Yes, sir. I believe these gentlemen have tried to answer that properly. They furnished what purports to be a copy of the constitution of the United Mine Workers adopted at Cincinnati, Ohio, October 11, 1948, and effective November 1, 1948. They also furnished a copy of the constitution adopted at Cincinnati on September 19, 1944. The first constitution mentioned; that is, the one adopted October 11, 1948, is in a little booklet form and it appears this booklet form is defective; there is a skip from page 72 to 83.

Mr. Harris: I stated in Kentucky that was an inadvertence

and we would give him another one. I haven't been back to Washington since.

Mr. Bryan: The booklet appears to be complete on the face, but when you look through it portions of it are missing.

The Court: The Court will ask counsel to furnish a proper copy.

Mr. Mullen: What pages are missing?

page 80 } Mr. Bryan: Page 72, the portion about District 50 is missing.

Mr. Mullen: Page 72 and then what you have is 82?

Mr. Bryan: What is your next page?

Mr. Mullen: The next page is page 73.

Mr. Bryan: This book has page 83 as the next number.

Mr. Mullen: You evidently got a defective book. They jumped over to the burial service portion, thought that was all you needed.

The Court: What is your next question?

Mr. Harris: That is just one constitution I am to get for you, I understand.

Mr. Robertson: Let me have one, too.

Mr. Harris: You have a defective one, too?

Mr. Robertson: No, I haven't any.

Mr. Bryan: I next refer to Question and Answer 23, Interrogatory No. 4, United Mine Workers.

Mr. Robertson: That is quite a long one:

"Did the constitution of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 3, 1949, provide among other things as follows:

page 81 } "Charters of districts, sub-districts and local unions may be revoked by the International President, who shall have authority to create a provisional government for the subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation to the next international convention."

Mr. Mullen: Without reading all that in the record can't

you state what your objection is to the answer? The question and answer are just too long.

Mr. Robertson: No, I can't do that and give the Court the context.

"During what period or periods did said constitution so provide?"

Mr. Bryan: The answer is: "Yes, at all times inquired about."

Mr. Robertson: Here is the next part of the question:

"During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did said International President have the authority or right to revoke the charter or certificate of affiliation of District 50 in accordance with and subject to the provision page 82 } visions of the language quoted above?"

Mr. Bryan: The answer to that question is: "At no time during the period inquired about."

In that connection over in connection with Question and Answer 2 United Mine Workers of America said that the constitution adopted at Cincinnati, Ohio, October 11, 1948, was in full force and effect and that no changes had been made in it since its adoption. Then in connection with Answer 23 they admitted that that portion of the constitution had been in effect at all times inquired about. Then when they were asked whether or not the President in accordance with and subject to the provisions of that portion of the Constitution had the authority or right to revoke the charter of District 50 the answer comes out: "At no time during the period referred to."

Do they mean that he did not have the right during that period of time because there was no cause for the exercise of the right or do they mean that there was some other ruling or interpretation perhaps by John L. Lewis which would change that portion of the constitution as it relates to District 50 and would do away with the right of charter revocation? I can't tell whether it is a play on words or whether there has been some ruling or interpretation which has changed the constitution. If that is the case, it would appear their answer to Question 2 is wrong.

page 83 } Mr. Harris: It is up to him to argue to the Jury that our answers are inconsistent, if the Court please. We are not going to agree with his interpretation.



tation of everything that he brings into the case. We have answered the question.

Mr. Mullen: Answered directly and specifically, stating during what period did he have the right and we stated at no time during the period inquired about.

Mr. Bryan: We will have to have another interrogatory then.

Mr. Harris: We can't help that. The threat doesn't help you.

The Court: That is your interpretation of the answer?

Mr. Harris: Yes, sir, we gave the best answer we knew how. We were asked at what time he had that authority and we say he didn't have it.

Mr. Mullen: As to why he didn't have it we are not asked to explain why he didn't have the authority. We answered he didn't.

Mr. Bryan: The language of the constitution appears to be perfectly plain.

The Court: That is a question you could argue before the Jury, couldn't you? You have asked them this specific question and they have answered it the way they feel it should be answered.

page 84 } Mr. Bryan: I will have to ask some more questions then.

The Court: You might remember this in regard to these interrogatories, that you can't do but so much. If you want to try this case in January, you must get everything in as soon as you can because if you ask questions the Court is going to give them time to answer them.

Mr. Bryan: This is just a sample and there are a number of samples throughout these answers just like this. They might be regarded as evasive. They don't come out and make a full, frank answer. They know what we are asking for and they don't answer it.

Mr. Mullen: What do you want us to answer more than the plain facts?

Mr. Harris: I object that we didn't make a full answer. In order that this Court might know, we had a meeting in Washington at which Mr. Mullen and I were both present and we went into the question of answers to interrogatories and our instructions were to answer wherever we could. Isn't that correct?

Mr. Mullen: Absolutely, and they were answered fully. I can't see anything that can be objected to in that answer or anything that is not perfectly clear. He asked during what period did the International President have the au-

thority and right to revoke the charter; that is, page 85 } between certain dates, and we answered at no time during the period inquired about. I don't think anything could be plainer. We are not called upon to say why or wherefore; we stated the facts.

The Court: I don't think that the Court should require amplification of that question and answer. That is their interpretation of the question and that was: "At no time" Now, of course, your interpretation, in view of the charter, may be different.

Mr. Bryan: The charter says the charter of districts, sub-districts or local unions may be revoked by the International President. We say, did he have that authority or right? They say no, and yet we show that language is in there.

Mr. Harris: That is a Jury argument.

The Court: Can't you point it out to the Jury that they are inconsistent, that by a reading of the charter it shows he does have that right and now in answer to this question they interpret it that he doesn't have that right? Isn't that a question of interpretation? You put a different interpretation on it and maybe the Jury will.

Mr. Bryan: It just didn't seem like a correct answer on the face of it.

Mr. Moore: Mr. Bryan just thinks one of the two is wrong; it is no question of interpretation. Either he has page 86 } got it or hasn't got it, and if they gave it to him and it never was changed, he has got it, and then to say he hasn't got it—

The Court: I see what Mr. Bryan is talking about, but if these gentlemen interpret it differently I don't know that I can make them say yes. What about it, Mr. Robertson?

Mr. Robertson: All right, you asked me a frank question. I don't think you can, either.

The Court: I don't see that I can make them say yes when they say no.

Mr. Robertson: They haven't fooled me any and haven't told a damn thing and we know what their argument is going to be.

Mr. Mullen: If you read the constitution, you could find the answer.

Mr. Robertson: I expect you will claim your answer is in Section 20 of the constitution.

Mr. Mullen: Yes, Section 20 covers it. It was a charter created by the Convention and therefore the International President couldn't do it.

Mr. Harris: I am glad I am not playing poker with you gentlemen.

Mr. Mullen: I know why it is a correct answer.

The Court: I think it is a question you may argue.

Mr. Mullen: We can meet that all right. What page 87 } next?

Mr. Bryan: Exactly the same question applies to 23(c) and 23(d). I think the answer is inadequate and patently wrong.

Mr. Harris: That is our hard luck if we are wrong. We have answered.

Mr. Mullen: Specifically and definitely to the point.

The Court: The same ruling on (c) and (d).

Mr. Bryan: Look at Question and Answer 1 in Interrogatory 2, United Construction Workers.

The Court: We are through with Interrogatory 4 for the time being?

Mr. Bryan: Yes, sir. I haven't got these in regular order.

Mr. Robertson: I will read the question—

The Court: Can't you just give the Interrogatory and the number? I am wondering if we can't save transcribing all of these questions because they are already in the record.

Mr. Robertson: Yes. This is No. 2, Question 1.

(Mr. Robertson read the question.)

Mr. Bryan: This is the answer:

“United Construction Workers, affiliated with United Mine Workers of America, (properly stated, United Construction Workers, division of District 50, United Mine page 88 } Workers of America) was organized independent of United Mine Workers of America and requested and received affiliation as a division of District 50, United Mine Workers of America, during or about the month of June, 1942. United Construction Workers, the defendant herein, has never had an organizing committee.”

You will note that the question asked when and upon what authority was United Construction Workers of America first organized. That question was directed to United Construction Workers and the answer just doesn't say. We know that United Construction Workers was organized by the Congress of Industrial Organization we think in about 1939. That is the proper answer, but it wasn't given.

Mr. Mullen: I don't think they are the facts. There was a split and a group came and asked for this charter under the name of United Construction Workers. The United Con-

struction Workers originally under the C. I. O. still exists. So your answer isn't correct.

Mr. Bryan: The United Construction Workers as an organization was originally organized we believe in 1939 by the Congress of Industrial Organization and when the C. I. O. and the A. F. of L. split the United Construction Workers became a part of the United Mine Workers of America. This is definitely an offshoot of the first organization.

Mr. Mullen: But not the only organization. The C. I. O. organization is still in existence. These people  
page 89 } left it and came down and said, "Here is a group  
of us that want to operate with the United Mine  
Workers."

Mr. Bryan: The answer just says the United Construction Workers was organized independent of United Mine Workers of America and requested and received affiliation as a division of District 50.

Mr. Mullen: Exactly.

Mr. Bryan: We asked when it was organized and upon what authority. That answer is left out. Down further they say: "United Construction Workers, a defendant herein, has never had an Organizing Committee."

Mr. Mullen: That is absolutely true.

Mr. Bryan: Mr. A. D. Lewis was Chairman of the Organizing Committee of United Construction Workers.

Mr. Mullen: That isn't correct. This is correct here. It never had an Organizing Committee. It was organized and came and asked for affiliation.

Mr. Bryan: The official publication shows the name of the Organizing Committee and shows who they were.

Mr. Mullen: Of District 50?

Mr. Bryan: United Construction Workers News shows it of the United Construction Workers.

Mr. Mullen: Well, if it does, I don't know.

Mr. Bryan: That is just simply another example.

The Court: What can the Court do about that  
page 90 } when you gentlemen have different views? I  
haven't heard the evidence; I don't know.

Mr. Mullen: I think we are discussing things to be argued before the Jury.

Mr. Robertson: They still haven't answered it. The question was when and by whom. That just doesn't answer it. They have a right to answer—

The Court: When and upon what authority.

Mr. Robertson: And they haven't said it. That is what we are complaining about.

The Court: What about that, Mr. Mullen?

Mr. Mullen: A group of men got together, organized and applied for a charter. It wasn't any authority.

Mr. Robertson: You haven't answered it.

Mr. Mullen: It was no authority; it was under charter.

The Court: I think you gentlemen can amplify your answer to Question 1 and state when and upon what authority.

Mr. Harris: It is Question No. 2?

The Court: Question 1 in Interrogatories 2.

. . . . .

page 91 } The Court: All right, Mr. Bryan, what is your next question?

Mr. Bryan: The next relates to Question and Answer 51 in Interrogatory 4.

Mr. Harris: United Mine Workers or United Construction Workers?

Mr. Bryan: United Mine Workers.

(Mr. Robertson read the question.)

Mr. Bryan: Your answer is: "In addition to the Chairman, the members of the Organized Committee are as follows: John Ghizzoni, John P. Brisarello, Martin F. Brennan, Hugh White and George Titler, each of whom was appointed by the International President in accordance with the constitution of the International Union, with the approval of the International Executive Board, prior to the dates inquired about and has served in the capacity of a member of the Organizing Committee during the times inquired about."

We would like to know when those people were appointed. They just said prior to the dates inquired about. Can you give those dates, Mr. Mullen?

Mr. Mullen: I don't know. It seems to me, however, that is a sufficient answer; it was prior to the date you inquired about.

Mr. Robertson: Of course, that is not telling when.

page 92 } Mr. Bryan: There are any number of questions in here that have the same thing, where we asked when such-and-such happened.

Mr. Harris: If we can get it, we will give it. I don't know whether we can or not.

Mr. Bryan: It just generally says prior to the date inquired about.

The Court: The Court rules the defendants should answer when the appointments were made; give the dates. What is the next one?

Mr. Bryan: Interrogatory 3, Question No. 9.

(Mr. Robertson read the question.)

Mr. Harris: Who is that addressed to ?

Mr. Robertson: District 50.

Mr. Bryan: It is the same objection to the answer.

The Court: The Court rules the dates of appointments should be given as set forth in the question. What is the next one?

Mr. Bryan: Question and Answer 18, Interrogatory 4.

Mr. Harris: I don't have them by that number.

Mr. Bryan: That is to the United Mine Workers.

(Mr. Robertson read the question.)

Mr. Bryan: The answer to that question is the same answer as given in answer 17 above. It is a rather page 93 } long answer; I don't know that it is necessary to read it all out. In connection with the answer, however, it appears that the International Officers include one president, one vice-president, one secretary-treasurer, three tellers and three auditors. While information was given about the president, the vice-president and the secretary-treasurer, the answer is silent with reference to the tellers and the auditors. Can you tell us who they were?

Mr. Mullen: I don't know who they were. I think somewhere else in here the information is given.

Mr. Harris: We have got it. We will give it to you.

Mr. Robertson: We also want when and by whom, each was elected.

Mr. Bryan: That is right.

Mr. Harris: Those are not by any chance the questions that were modified by the Court, are they?

Mr. Bryan: No, sir.

Mr. Harris: We don't want to waive any modification of the Court.

The Court: It is agreed that additional answers will be filed?

Mr. Harris: Yes, sir, on Question 18 to give the names of the tellers and auditors and by whom and when elected.

Mr. Robertson: Of course, this will be done by page 94 } the 20th of December, too?

Mr. Harris: I have got up at the head of the page "For answer by December 20th" and I just assume that would apply to all of them.

The Court: I assume that would be a reasonable time.

Mr. Bryan: Look at Question and Answer 66, Interrogatories 4; that is addressed to the United Mine Workers.

(Mr. Robertson read the question.)

Mr. Bryan: The answer is: We have no knowledge with respect to the extent of work the plaintiff may claim to have had for Pond Creek Pocahontas Company or Spring Fork Developing Company. However, Breathitt County, Kentucky, was serviced during the times inquired about by Region 58.

Is Breathitt County in Region 58 or not?

Mr. Mullen: That is a correct answer.

Mr. Robertson: You haven't answered it. It is either in or out.

Mr. Mullen: We have said Breathitt County was serviced during the time inquired about by Region 58.

Mr. Robertson: That isn't an answer. We want to know whether it is in or out.

Mr. Mullen: You will find another answer here page 95 } as to persons included in Region 58, certain counties in Kentucky and West Virginia, included in which was Breathitt County.

Mr. Robertson: And another place where it didn't include it. We want to know whether it is in or out. We are talking about this question now.

Mr. Harris: The next questions 67 and 68 are like you say—let's see what the counties are.

Mr. Bryan: That was the next question I was coming to. Will you name the counties?

Mr. Mullen: I think that is a sufficient answer.

Mr. Bryan: I don't.

Mr. Mullen: That is the county you are interested in.

Mr. Bryan: The Court has indicated it would confine certain inquiries to Region 58 and we just want to know what Region 58 comprises. We undertook to find out from Mr. Hunter by asking him some questions, but didn't get a satisfactory answer.

The Court: It wouldn't be much trouble to give the list of counties, would it?

Mr. Harris: If we know, we will give it.

The Court: Suppose you gentlemen enlarge on the answer and give the counties.

Mr. Robertson: That also applies to 67?

The Court: Yes, 66 and 67. What is the next one?



Mr. Harris: Enlarge and give the names of the page 96 } counties and say whether in Region 58?

Mr. Bryan: That is right. Next is Question and Answer 9(e), Interrogatories 4.

(Mr. Robertson read the question.)

Mr. Bryan: The answer is: "Since October 28, 1948, there have been no designations or approvals of 'other industries'."

We didn't ask which ones had been approved since October 28, 1948. We wanted to know which industries between those periods were the approved and designated other industries.

Mr. Harris: I submit we gave a fair and proper interpretation to the question framed.

The Court: Read the question again.

(The question was read.)

Mr. Harris: We took that to mean he wanted to know what industries had been designated and approved after those dates, and there had not been any.

Mr. Robertson: I don't think that is what the language said.

Mr. Harris: That is the way we interpreted it.

The Court: I believe they are asking for the names of industries in here.

Mr. Robertson: That was the idea. I know the page 97 } railroad workers are one and the dairy workers are one. You can take the various industries and occupations organized by District 50 and the United Construction Workers and they are just multitudinous.

The Court: It says what were the designated and approved other industries between the dates of August 28, 1948, and August 4, 1949. I take that to mean naming the various industries.

Mr. Mullen: The answer would be there are no industries designated other than the United States and Canada as a whole.

Mr. Robertson: If that is the answer, that is what we are entitled to.

Mr. Mullen: However, I am not undertaking to answer it. I know I heard discussion of it.

The Court: The Court will request counsel to amend that Answer 9 (e).

Mr. Harris: The way these are mixed up and not followed

in sequence, if I get one wrong—I am trying to get them right.

Mr. Bryan: Question and Answer No. 55, Interrogatories 2, United Construction Workers.

(Mr. Robertson read the question.)

Mr. Bryan: The answer is: "There have been no specified claimed jurisdictions by the United Construction Workers."

Article 2 of United Construction Workers, Section 1, provides—we got this from one of the boys of the United Paper Workers—"To organize on an industrial basis without discrimination on account of creed, color, nationality or classification of employment or workers employed in and around industries within its jurisdiction."

Mr. Harris: If they have not been specified, they haven't been specified.

Mr. Bryan: Do they claim all industries?

Mr. Harris: That wasn't what you asked. You asked what had been specified.

Mr. Mullen: That is a correct answer as it stands.

Mr. Bryan: I don't think so. It says: "What work, occupations and industries were claimed by United Construction Workers to be within its jurisdiction between the dates October 28, 1948, and August 4, 1949; and what work, occupations and industries have been claimed by United Construction Workers to be within its jurisdiction since August 4, 1949?"

Mr. Harris: And we say none were specified.

Mr. Bryan: Is it that you don't claim any?

Mr. Mullen: No. There is no limitation, as I told you just now.

page 99 } Mr. Robertson: Then that would be the answer.

Mr. Bryan: You claim 26.

Mr. Harris: When we say there was no limitation, none specified, that is the answer.

Mr. Moore: Have you got any limitation in here?

Mr. Mullen: No, but it says none specified.

The Court: You might add to it: "No limitation".

Mr. Harris: I assume these gentlemen on the other side know that certain railroad unions are not available to anybody under the Railway Labor Act.

Mr. Bryan: What do you mean?

Mr. Harris: We don't make any effort to organize railroad workers.

Mr. Bryan: You have a railroad workers division of District 50.

Mr. Robertson: And Mr. Carroll was very highly complimented for his work on the Long Island Railroad Company.

Mr. Harris: That is all news to me.

The Court: What is the next one?

Mr. Bryan: Question and Answer No. 54, Interrogatories 3, District 50.

(Mr. Robertson read the question.)

Mr. Bryan: "Answering the question as modified by direction of the Court this defendant says:

page 100 } "With respect to both District 50, United Mine Workers of America, and United Construction Workers, there were no specified claimed jurisdictions during the times inquired about."

I don't recall any modification of that.

Mr. Robertson: Yes, there was a misprint in it and I read it as corrected. I suppose it will be the same ruling there, the same answer.

Mr. Harris: I think the question is slightly different. Read the question again.

(The question was read.)

Mr. Harris: I submit that is a fair answer. We say they did not claim any jurisdiction.

Mr. Robertson: It is exactly the same proposition as the other one.

Mr. Harris: No, it isn't.

Mr. Mullen: We can't change the facts just to suit you.

Mr. Bryan: Does District 50 claim jurisdiction over certain industries and, if so, what are they? That is all we asked for and you haven't said.

Mr. Harris: I have stated the facts. I can't change the facts for you.

Mr. Robertson: No, but you can answer the question.

Mr. Harris: I tried to.

page 101 } Mr. Bryan: The truth is they don't want to say District 50 and United Construction Workers and, in a sense, United Mine Workers all claim jurisdiction over the same thing.

Mr. Harris: You know, you are the first lawyer I ever saw that always knew what he wanted to say.

Mr. Bryan: Well, I think I know this one.

Mr. Robertson: I think he has better studied it than any man you ever saw.

The Court: Those side remarks I don't think help.

Mr. Mullen: I discussed this question very fully with them. There was no claimed jurisdiction; it has just grown.

The Court: They say there were no specified claimed jurisdictions.

Mr. Robertson: Do they mean they claim everything without limitation like I think they do, like the other question? If they are willing to answer the other one, why aren't they willing to answer this one?

Mr. Bryan: Here is Article 2 of District 50, Section 1: "To organize on an industrial basis without discrimination on account of race, creed, color, nationality, sex or classification of employment all persons engaged in and around the industries and occupations within its jurisdiction." page 102 }

The use of the word "jurisdiction" in connection with labor unions has two meanings. Sometimes it means jurisdictional area, a certain territory or area over which the union asserts or claims jurisdiction, but it also means certain trades and occupations over which a union claims jurisdiction. That is what they are talking about here, I think: "Within its jurisdiction".

Mr. Mullen: You have said yourself that District 50 was a catch-all. There has been no limitation put on it, no specified territory.

Mr. Robertson: Then they claim unlimited jurisdiction. That is what we think it meant. If that is what they meant—

Mr. Harris: No, we can't let you frame our answer. We take the question and if our construction of the question is reasonable, that decides the question subject to the ruling of the Court.

The Court: Then the Court understands the following words "there were no specified claimed jurisdictions" to mean that there were no limitations?

Mr. Mullen: No limitations.

Mr. Robertson: Then I think they ought to say so.

The Court: Suppose you add that to their page 103 }

Mr. Bryan: Look at Question 54 in interrogatories 2.

Mr. Harris: That is United Construction Workers?

Mr. Bryan: Yes, sir.

(Mr. Robertson read the question.)

Mr. Bryan: The answer is "No formal claims of jurisdiction for any particular work were ever made by Local 778A within the knowledge of this defendant." As I said a minute ago, the word "jurisdiction" has two different meanings. Sometimes it means area and sometimes it means work claimed by a union. For example, the carpenters' union does not claim jurisdiction over plumbing work or electrical work, and the electrical union does not claim jurisdiction over masonry. In asking this question we just asked did the United Construction Workers Local 778A claim jurisdiction over the work the plaintiff was doing in Breathitt County and we got this answer: "No formal claim of jurisdiction."

We didn't ask anything about formal claim. We want to know whether they claim it.

Mr. Harris: Of course, we can't read the minds of these members of the Local. There is no way we could possibly say what any particular man thought and if they made no formal claim that is the only kind of claim we know anything about. We are not mind-readers down in that country.

Mr. Bryan: We are calling on the defendant page 104 } to answer. Either it did or didn't. If it didn't, it can say so.

Mr. Mullen: We don't have to answer the question the way you want us to answer it. There are a lot of things in here you don't like.

Mr. Robertson: Mr. Hunter testified in Kentucky that 778A was a sort of—you might say a dummy—that isn't the right word, but a local set-up to be in existence—for instance, I think you have to have ten men to form a local and they would keep this shell there and if they signed up one man they would put him in 778A and keep it going until they built up ten or fifteen men and put them out in another local, but that was a receptacle to dump them in as they signed up any less number than necessary for a permanent local union. Now if I am wrong in what I said to you I invite correction, but that was a receptacle kept there to catch these fellows that signed up until they could reorganize them into something else. If that was a method of their organization there, they must know it. It is their duty to know what they were claiming and that is in substance what I understood Mr. Hunter to testify on this last trip when we were out in Kentucky.

Mr. Harris: I think my recollection is substantially the same as yours as to what Mr. Hunter swore to, page 105 } but I don't think that is relevant to the point in dispute between us. If the Local 778A didn't make any claims, we wouldn't know of any claims.

Mr. Robertson: If that is a local of the United Construc-

tion Workers, if the United Construction Workers is the larger organization and this is one of its subordinate units which it sets up for a stated purpose, when they set it up they are compelled to know what they set it up for.

Mr. Harris: You didn't ask us what it was set up for.

Mr. Robertson: No, we asked what you are claiming. I am giving the background in the light of Hunter's testimony and you say you set it up for a stated purpose, but say you can't tell what its basis was. That doesn't make sense.

Mr. Mullen: Mr. Robertson's statement of the testimony given out there shows this is a correct answer. This is a union, as he says, in order to have a place to place anybody that comes along in any kind of business they try to organize. There is no limitation on the claim or on the jurisdiction that they will undertake to exercise and that is the way they handle it.

Mr. Robertson: If there is no limitation, then they claim this work of Laburnum out there. If there wasn't any limitation on it, then they claim it and should say so.

page 106 } Mr. Harris: I don't think they can force us to try to make an answer to suit them that doesn't state the facts.

Mr. Robertson: We are not trying to do that. We are trying to make them answer the question without dodging it.

The Court: What the Court is concerned with is whether or not they can give a better answer than this.

Mr. Robertson: I think Mr. Mullen has already given it. He said it was universal. If it was universal, they claimed jurisdiction over Breathitt County.

Mr. Mullen: I didn't say that. I said this statement showed that was—in the first place, that "A" means it is a provisional union, provisional in that provision was made where they got less than ten men in any particular industry they want to take in they could handle them temporarily through that union.

Mr. Robertson: Then it covers everything on the earth. It is set up as a catch-all for everything, isn't it, and if so, then its jurisdiction is universal, including Breathitt County, Kentucky.

Mr. Bryan: We are not trying to tell Colonel Harris or Mr. Mullen how they should answer the question, but we simply feel that the answer submitted is not responsive.

This claiming of jurisdiction—United Mine  
page 107 } Workers claims jurisdiction over coal miners, the  
United Brotherhood of Carpenters claims jurisdiction over carpenters and we want to know if these people claim jurisdiction over the work we were doing.

The Court: In other words, you want an answer yes or no.

Mr. Bryan: If they don't know, say they don't know.

Mr. Mullen: We can't give them that kind of answer.

Mr. Bryan: We might have used the word "assert" instead of claimed. The meaning is the same, I think.

The Court: Can't this question be answered yes or no, or the defendant is not advised.

Mr. Mullen: We could just answer it is not advised.

Mr. Robertson: I don't think they can just duck it that way.

The Court: Suppose they don't know; I can't make them say.

Mr. Robertson: I am just trying to get away from quibbling. To my way of thinking, Mr. Mullen has already given the answer. He said it was this catch-all and it was without limitation, and if I am set up there to receive representatives of every industry on earth, then I claim jurisdiction over every industry. He has given the answer, but is  
page 108 } not committed to it.

The Court: Is that substantially the evidence developed in Kentucky?

Mr. Bryan: I think so.

The Court: Haven't you got that in the record?

Mr. Robertson: We got it from their witness and got it in an equivocal form here and are trying to get it in an unequivocal form.

The Court: I think you are entitled to it if they can answer it. I think it should be answered yes or no, if possible. If they say they can't answer it yes or no, I don't know of any way to compel them to say yes or no.

Mr. Mullen: I want to say the question they are talking about I think the answer is correct as made. However, we will look into it.

The Court: What is the next one?

Mr. Bryan: No. 57, Interrogatories 2, United Construction Workers.

(Mr. Robertson read the question.)

Mr. Bryan: The answer is: "The records of membership are supposed to be kept, and it is assumed that they were kept at the headquarters of Local Union 778A. This defendant has written requesting the information sought in this question and same will be attached hereto and marked as 'Exhibit 7' if and when received."

page 109 } Mr. Robertson: They can't just bow out that way. It is their agent; it is up to them to get it.



Mr. Bryan: Mr. Hunter testified he was administrator of-  
ficer of the union. Maybe there is no record; it might be a  
dummy.

Mr. Robertson: Suppose Your Honor was my agent and  
the Court ordered me to do something and I said, "I will  
write to Judge Snead and tell him to send it in. If he sends it  
in, I will file it, but if he doesn't, why go and jump in the  
lake."

Mr. Harris: We did not, of course, insinuate anybody  
take a swim. We had to file our answers within a specified  
time and we worked I think prodigiously to get them in and  
we didn't have the information.

Mr. Robertson: We still haven't gotten it at this late  
date.

The Court: You gentlemen proceed as expeditiously as  
possible to get that information.

Mr. Harris: Yes, sir.

Mr. Mullen: Most of it isn't in existence, I happen to know.

The Court: What is the next one?

Mr. Bryan: Interrogatories 2, Question 39.

Mr. Harris: That would be U. C. W. again?

Mr. Bryan: Yes, sir.

page 110 } (Mr. Robertson read the question.)

Mr. Bryan: The answer is: "None".

Mr. Mullen: That ends it.

Mr. Bryan: I would like to call Your Honor's attention  
to this. In Question 36 of Interrogatories No. 2 the United  
Construction Workers was asked in what capacity or ca-  
pacities was Thomas Davis employed by United Construction  
Workers between those dates and in what capacity or ca-  
pacities was he employed by United Construction Workers  
since August 4, 1949. The answer says, "During all the times  
inquired about Mr. Thomas Davis was employed by the United  
Construction Workers by its director and assigned as Re-  
gional Director of Region 31 of United Construction Workers  
and District 31, United Mine Workers of America, and was  
assigned also as Assistant to the Chairman of the Organizing  
Committee of District 50, United Mine Workers of America,  
and assistant to the Director of the United Construction  
Workers. It appears from other answers which have been  
filed by the defendant that a Regional Director is required  
to file reports once a week with the National Director of  
United Construction Workers or the Chairman of the Or-  
ganizing Committee of District 50."

In the case of Mr. David Hunter various reports were fur-

nished. In the case of William O. Hart various reports were furnished, although they related to Mr. Hart's page 111 } activities up near Clarksburg, West Virginia.

Mr. Harris: Judge, we can't furnish a report if he didn't make any.

The Court: I don't see how you can either. Even though he is required to do it, if he didn't make any report, as you gentlemen say he didn't make any, I don't see how he can furnish it.

Mr. Mullen: That answer wouldn't be there if they weren't the facts.

Mr. Bryan: I raised the question because I thought perhaps in answering that question you limited the thing to Region 58 of United Construction Workers or District 50.

Mr. Harris: What is that?

Mr. Bryan: I raised the point because I had the idea in answering the question you might have had in mind limiting the inquiry simply to Region 58 of United Construction Workers. Mr. Davis is Regional Director of Region 31 and also in charge of a lot of regions, as I understand it, including Region 58. It is not specified that he hadn't filed any reports.

Mr. Mullen: Colonel Harris, these questions have been gone over by three or four people in Washington?

Mr. Harris: Oh, yes.

Mr. Mullen: They have been over them with us. This is the final form they gave to us and the answer is page 112 } "None". I think that ends any discussion on it.

Mr. Harris: I think you are right. If our witness says that none were furnished, then that is the end of it.

The Court: The question does not limit it to Region 58.

Mr. Bryan: I know it doesn't limit it to Region 58, but there was so much discussion about limiting other questions to Region 58 I thought these gentlemen in taking the matter up with the people in Washington had told them this question was also limited to Region 58 and that prompted the answer "None".

The Court: Are you gentlemen advised as to that situation?

Mr. Harris: No, Judge. I am going to ask them about it.

The Court: Ask them if that applies to the others.

Mr. Bryan: Your Honor, that is all the questions I have in mind at this time.

The Court: All right, Gentlemen. I believe that is all for today, isn't it?

Mr. Mullen: Those few objections to 400 questions shows we have tried to answer them.

Mr. Bryan: I don't say they are all the objections because we haven't finished analyzing them yet.

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page 1 }

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Transcript of a pre-trial conference before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, on December 11, 1950.

Appearances: Mr. Archibald G. Robertson, Mr. T. Justin Moore, Jr., Counsel for plaintiff.

Mr. James Mullen, Mr. Crampton Harris, Mr. Robert N. Pollard, Jr., Counsel for defendant.

page 2 }

. . . . .

Mr. Mullen: If Your Honor pleases, I believe, as Fred told you in making the appointment, we have only a single questions to take up. It is Question 57 of the original interrogatories to the United Construction Workers. The question is:

"Who were the members of United Construction Workers Local Union 778A on July 14, 1949; and when was each of those persons initiated to membership in United Construction Workers; and what persons became members of said Local Union 778A between the dates July 14, 1949, and August 4, 1949; and when was each of those persons initiated to membership in said United Construction Workers?"

We find, Your Honor, that there were on July 14th two hundred members of Local 778A. To make those names public would open the door to reprisal by employers who are opposed to the union. Even under the National Labor Relations Act in determining whether a union represents the employees of any employer they do not and are not required and cannot be required to disclose the names of the members of the union. All the voting is secret for the very reason I have mentioned. In litigation involving unions it has been a rule not to re-

quire that the names of the members of the union be made public.

That is the situation here. There are, we know, page 3 } some of the employers of some of these men who are opposed to unions, are fighting unions, and to disclose the names so that they could be seen by anyone would open them to reprisal, open them to possible loss of jobs, and so forth.

Now that is a matter we want to ask that we be not required to give the names. Those men have no relation—a great majority of them have no relation to this business. We had signed up during that period members of the Laburnum Corporation—employees of the Laburnum Corporation. If they want a list of those, that is a different matter, but if others who have no connection with this matter we submit, Your Honor, we should not be required to make their names public and subject them to possible reprisal or loss of their jobs. That is the question we have.

Mr. Robertson: Now, if Your Honor please, we think that point is absolutely without any merit. In the first place, they have no standing in Court or out of Court so far as the Taft-Hartley Act is concerned or the Wagner Act or any Federal statute. Coming back to the Taft-Hartley Act, of course when they refuse to file the anti-communist oath they are outlawed under that act.

Now the whole argument is predicated on the supposition that some unidentified people not parties to this action may do an illegal act hereafter if we get the information we have asked. Of course, the Court will not assume that page 4 } somebody is going to break the law and I don't know what law he is talking about breaking.

Now we have got a right to have the information we want for this reason. They have told us—I think this is a fair statement—when I talked to them, it might not be this witness or that witness, but that they will be here with a cloud of witnesses. We are entitled to the information that we ask both in the preparation of our case for affirmative proof of our case and also so that when they come here with whatever witnesses they bring we are entitled to that information in advance in order that we may show their bias or lack of bias, and we are entitled to it at this time so we may take such action as we deem proper within the law between now and the trial date to strengthen our case in whatever way we deem proper.

Now take this situation—I haven't even made this point before. Every single place that we have been to take any testimony—I think I am saying this correctly—David Harter

and Hobbs and sometimes other people have shown up and I have no legal right to say it but I have the factual right to say it, it has constituted a continuing and absolute and malicious threat to our witnesses. I can here right now or have Your Honor out in a back room in an office in Kentucky and I can sit there and look you in the eye with an expression on my face and an attitude of manner that is such a threat as if I wrote a letter like President Truman and yet I have no right even to raise that point, and they have no right to raise any such point.

We are entitled to everything we asked in that question. I am going to ask Mr. Bryan to address himself to that.

Mr. Bryan: I might start by saying, Your Honor, that in the interrogatories propounded to the plaintiff by the three defendants the plaintiff was requested to furnish the names and addresses of every employee employed by the plaintiff at the job site at Breathitt County, not just on July 26th, the date on which this mob came to the job site and drove the plaintiff's employees away, but over a period of time extending back as far as I think July 10th or July 14th—I don't have those interrogatories with my papers at the moment. The Court instructed us to answer that question. We felt it wasn't fair because just as Mr. Robertson has pointed out, the United Mine Workers, District 50 and United Construction Workers out in that territory exercise such an overwhelming and overpowering influence that many people in that neighborhood are terrified. They are afraid to incur the displeasure of those three powerful unions. They think if they do, they will be placed in a position where they will be unable to obtain employment and may perhaps find it necessary to leave their homes in the eastern part of Kentucky where they have lived for many years. We thought to disclose that information wouldn't be fair to our own people and shouldn't be done. The Court instructed us to answer it and we did it.

Now, in connection with this incident and trouble in Kentucky various picket signs were put up. I call them picket signs; they might also be called placards. As far as we know, there wasn't any man walking around with a sign on his back whom you would ordinarily refer to as a picket. However, these defendants did cause to be put at or near the job site these placards announcing the fact that the plaintiff was unfair or there was a so-called strike or a labor disturbance.

Some of these placards have United Mine Workers of America; others have Local Union No. 778, or District 50 or United Construction Workers. I am speaking from memory at the moment. It is better to look at the signs, but we don't

have them here. But I know Local Union No. 778A was on some of the placards.

We have attempted to find out what Local Union 778A really is. It appears from the information we have obtained from records in other cases involving these defendants and also from the testimony of Mr. David Hunter when his deposition was taken in Pikeville last month that Local Union 778A is a dummy organization. Mr. Hunter said he was the administrative officer of Local Union 778A. It appears that this local union is a sort of clearing house into which various employees are put by these defendants until such time as charters can be issued for other local unions to be established.

We have asked who were the members of Local Union 778A because we think if any of our employees are members of either United Construction Workers or District 50 or United Mine Workers of America they were members of that local union. We question seriously whether any of our employees were members of any of those organizations. In fact, we don't think they were because we have in our possession cards signed by all of these—not all of our employees, but certain employees, and being the main ones in contention, making application to become members of local unions affiliated with the American Federation of Labor and those cards were signed very near the date that this trouble occurred.

We think that we are entitled to this information and what Mr. Mullen is talking about now must be somewhat of an afterthought because in the answer prepared by United Construction Workers to our interrogatories propounded to that organization, Interrogatories No. 2, United Construction Workers said this in answer to Question 57:

“The records of membership are supposed to be kept and it is assumed that they were kept at the headquarters of Local Union 778A. This defendant has written requesting the information sought in this question and the same will be attached hereto and marked as Exhibit 7 if and when received.”

I doubt if they have got a record of the membership of Local Union 778A. I don't believe they know who the members were. I don't believe Mr. Hunter knows. If they don't know, let them say so.

Mr. Mullen: We have a list of them and know who they are. There are over two hundred.

Mr. Robertson: Then they are estopped to make the point here.

Mr. Mullen: Some of the men are objecting to having the names made public.

Mr. Bryan: They said they will furnish the information if they get it and now they say they have got it.

Mr. Mullen: If Your Honor please, the very statement of Mr. Bryan shows the difference. We asked in our interrogatories, not who all their employees were, but solely who were the men employed on that job out there. We limited it to them; didn't ask about any other job, what other unions they belonged to or anything of that kind. We are perfectly willing to furnish them the names of the men who were their

employees who applied for membership in this page 9 } union. We don't think who are the members of the union who are the employees of XYZ is in any way relevant to this case. We put it on the ground of relevancy; it wouldn't prove anything for them any more than any other union roster and it can do harm to those who are innocent bystanders. Some who knew we were making up this list have objected to their names being made public. They are not involved in this trouble in any way, shape or form.

As I say, we limited our request for information as to their employees solely to those who were working out there on the job, men whom they say we drove off the job, and to have the names of these others can help them in no way. We will give them the names of their men and that we figure is the limit we should be required to go.

Mr. Robertson: Now, if Your Honor please, of course you have ruled time and time again here that you are going to defer any ruling on the relevancy of testimony until the trial proceeds and, therefore, this is not the appropriate time to raise that question and we are not bound by the *ipse dixit* of counsel for these defendants as to what they have told him and what he thinks is relevant and what isn't relevant; that is a matter of adjudication.

Now to give you one phase of this thing—this I think already in the record in these depositions we have taken out in Kentucky since the last time we were here—page 10 } suppose Your Honor is a member of the A. F. of L. and you go out in that territory and you want to go to work and they say, "Well, this is United Mine Workers' territory; we don't recognize the A. F. of L. and you can't go to work here unless you sign up with us and pay your dues and initiation fee," and they go to your contractor for whom you want to work and tell him the same thing and it is quite a usual thing for the contractor to say: "All right, I am going to work twenty-five men here; the initiation fee is so many dollars, the monthly dues are so much. I will just pay you



that much and we will go ahead," and then it is quite the customary thing there for a fellow that is already a member of the A. F. of L. to say, "All right, I will sign up and pay my initiation fee and pay my dues," and they say, "All right, we will leave you alone and you can go to work,"

We are going to have that in the record and we are entitled now to know which of these men here signed up with this United Construction Workers for that reason in addition to all other reasons, I am not criticizing counsel because I don't think counsel are controlling the client; I think the client is controlling the case for the defendant, but I think we might come here through responsible counsel and say they have written for that information and they will put it in here in the form of an exhibit when it comes and then counsel tell

you this morning they have got the list, but now page 11 } say they don't want to divulge it because some of the people think probably they might be called here as a witness and they don't like it and therefore might refuse to testify, and we have had a number—we will show you this—we have had some refuse to testify because they were scared to testify. We have had one who refused to testify because we declined to pay him \$1,000 before he testified. So we are entitled to get this information in the record.

Mr. Mullen: If Your Honor please, we didn't realize at first the injury it would do to other people not involved in this controversy,

Mr. Robertson: And I don't realize it or concede it now,

Mr. Mullen: Your statement doesn't make any difference.

Mr. Robertson: I think Mr. Bryan has something further to say,

The Court: I am going to let Mr. Mullen close, so suppose you go ahead,

Mr. Bryan: I just want to point this out, that these defendants hold themselves out as being high, outstanding, up-right organization. I don't know why Mr. Mullen should take the position it is a person subjecting himself to some indignity, scorn or ridicule because it became publicly page 12 } known he was a member. If that is the case, put that in the record to show some indication of the type of organization it is.

The Court: Have you gentlemen anything further to say before I give Mr. Mullen an opportunity to close?

Mr. Robertson: No.

Mr. Mullen: I think it is a matter of common knowledge that there are employers who when they learn that men in their employ are members of the union they don't want their people unionized; they discriminate against them, they dis-

charge them. Frequent cases of that come up; we see it in the papers, find it in the record of actual cases.

We didn't realize, didn't have in mind at the time this question was brought up the damage that might be done, the injury that might be done to people in no way connected with this controversy. We do not expect to go out and bring in people from companies who were not involved in this transaction in any way, shape or form. We don't know who they are, don't see they could have anything to say that would have any bearing whatever on this.

So far as the presence of Mr. Hunter and others out in Kentucky and West Virginia, we are dependent on them when we go out there for transportation, we are dependent on them for local knowledge. Of course, we have some of them present. They are not there to threaten their witnesses; they are there to give us information and take us around from place to place.

Mr. Robertson: Of course, you haven't been out there and looked at them like I have.

Mr. Mullen: I have been in three sets of depositions taken there.

Mr. Robertson: You were sitting in the city; you haven't been out in the bushes.

Mr. Mullen: I was lucky, perhaps. If it had any bearing on this case, the names of these people, that would be a different matter, but it is certain by no stretch of the imagination can these outsiders have anything to do with this case or have any information or anything that is relevant to it, and we ask Your Honor not to subject them to the possible reprisals, but to limit the question to those who were employees of Laburnum, just as we limited our interrogatories to those who were employees of Laburnum, on that particular job. They have a right to know which of their men signed up with us. We have a right to know who were the men employed on the job. Beyond that, I don't think either one of us have a right to go. I submit that to Your Honor.

The Court: Well, Gentlemen, I think the question should be answered and the Court at the trial will pass on the relevancy of the matter.

Mr. Mullen: Very well, Your Honor. We reserve the exception.

The Court: That is understood. Does that conclude the matter?

Mr. Bryan: The last time we had a conference here we discussed the answers—some of the answers made to the interrogatories propounded to these defendants. At that time I had not had an opportunity to go over all the questions

and answers, and still haven't, but there is one that has come to my attention that I would like to bring up now. It relates to Local Union 778A, Question and Answer No. 30 in Interrogatories No. 4, addressed to the United Mine Workers of America. Here was the question:

"Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows:

"Should any local union be dissatisfied with the decision of any of the governing branches (unless prohibited by joint agreement) it shall have the right of appeal to the branch next in authority until a final decision is reached as provided in Section 3 of Article III and, if so, state the following:

"(a) During what period or periods did said constitution so provide?"

The answer to that is all right. It says this:

"At all times during the period inquired about."

page 15 } "(b) With respect to the 'governing branches' mentioned in the language quoted above what governing branch had authority over United Construction Workers, Local 778A, between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949. Name these governing branches, commencing with the branch having the least authority and then proceeding step by step to the branch having the highest authority."

The Court: I don't see that.

Mr. Bryan: It is down here as a sort of note and it is continued over to the next page.

The Court: I see.

Mr. Bryan: That question was answered in this manner:

"The chain of authority in reference to interpretation of governing branches as inquired about in this sub-section is affirmatively answered in Sections 3 and 4 of Article VI and Section 3 of Article III of the constitution."

We disagree with that. At least, it doesn't furnish the information we want. We asked them to name the governing branches, commencing with the branch having the least authority and then proceeding step by step to the branch having

the highest authority. By looking at Sections 3 and 4 of Article VI of the constitution of the United Mine Workers and at Section 3 of Article III of the same constitution you can't tell with any accuracy what the next governing page 16 } branches are that have authority. It appears that the highest is perhaps the International Convention. Down from that we don't know. We think it is the United Mine Workers of America, but it might be the International Executive Board of United Mine Workers of America or it might be some other body in the United Mine Workers of America. Then you come to below that, what would have? Is it District 50? We think it is. What part does the Organizing Committee of District 50 play? Is that considered to be a governing branch? Is there any other sub-district or district between District 50 and United Construction Workers? We don't know. We can't tell from the provisions in the constitution referred to in this answer.

Mr. Robertson: We just asked them to name the branches.

Mr. Bryan: The provision in the constitution is clear, I think, but we can't tell from the language in the constitution the exact governing branches which have authority over Local Union 778A and the exact chain of authority. That is the information we were anxious to obtain and we think it is highly relevant, has a direct bearing on our allegations of an agency relationship. The answer as given is not responsive and we would like to have it revised.

Mr. Robertson: If Your Honor please, let me just give you an illustration of that. We have spent literally page 17 } days studying these things.

Suppose that the local union—we will take 778A and suppose somebody is dissatisfied with that, or any other union. You say, "Well, where do you appeal from there?"—I am talking about United Construction Workers—"Where do you appeal from there? Do you go up to your regional officer? Do you go to District 50? Then after you go to District 50 of United Construction Workers where do you go from there?"

We think you go from there to the top of the United Mine Workers, but you can't read that constitution and tell. We know that District 50—you see there are two different District 50s; District 50 of United Mine Workers and District 50 of United Construction Workers, and all divided into different regions.

Now here is a fellow in a local union of United Construction Workers; he thinks he has been illegally treated and wants to go as high as he can. Does he go from the local to the regional office, from the regional office to District 50 and from there up into United Mine Workers or what happens to him? Sup-

pose he is a member of the United Mine Workers local; which way does he go up? Just like you see the courts of the Commonwealth are made up of the Supreme Court and such courts as the General Assembly may constitute. That is all right. Then I come along and I say I start out with the Justice of the Peace and I want to go as high as I can and you page 18 } name me the procedure through which I go. That is what we are asking here.

Mr. Mullen: If Your Honor please, I think the answer covers the question. The right of appeal is covered by the constitution and it is stated who has the right of appeal and the order in which it goes. I haven't the answer to the interrogatory here, but I think in another one it is specifically stated exactly—I think you asked the question who had the jurisdiction over so-and-so and state the branches on up. I think it was stated specifically in that case.

District 50 has nothing to do with United Construction Workers; they don't appeal to United Construction Workers from District 50. It is all stated very specifically. You go from the local union to the governing body of United Construction Workers and from there to the International Executive Board and from there, if necessary, to the International Convention. That is all set out again and again in all three of them.

Mr. Robertson: If they have got the information, what on earth is their objection to giving it? I call the Court's attention to this: I think that goes right to the heart of our case and we can't indulge in the hope of developing that on cross examination of their witnesses. We have got to be prepared to prove our case in chief and if it is as simple and page 19 } can be stated—whether it is simple or obtuse, if we can't find it out from the way they answer it, why can't they answer it in a plain, straightforward way so anybody can understand it?

Mr. Bryan: In the interrogatories propounded to the United Mine Workers, being Interrogatories 4, they were requested to furnish a copy of the charter or certificate of affiliation granted to United Construction Workers. That was furnished as an exhibit with the answers filed by United Mine Workers, which says that United Mine Workers of America doth grant this charter to A. D. Lewis, Chairman, and Gardiner Wales, Comptroller, United Construction Workers division and their successors in office, to constitute a local union to be known as UCWD, District 50, for the purpose of effecting thorough organization of the workers in this industry.

Mr. Mullen just said that District 50 had nothing to do with United Construction Workers, yet it appears that the head administrative officers and national directors of both organizations are one and the same man, Mr. A. D. Lewis, brother of Mr. John L. Lewis, and that the comptroller of both organizations is the same man, Mr. O. B. Allen, both of whom were appointed by the President of the United Mine Workers of America with the approval of the International Executive

Board. It further appears that in every case a page 20 } regional director of United Construction Workers is also a regional director of District 50. It appears that the industries each organization seeks to organize are substantially the same. Really it is one organization traveling under two different names. Why, I don't know.

Mr. Mullen: To coordinate organization.

Mr. Bryan: One of the things we were anxious to find out and asked in these questions was the position of these defendants as to the authority of District 50 over United Construction Workers. You certainly can't tell that from reading this constitution nor anything in it. You can argue what you think that means, but we would like to know what the defendants think it means.

This language means something. They refer to governing branches; that is the language in the constitution. A governing branch means a branch which has the power to perhaps, in fact, exercise control over some other branch, a subordinate branch. That, as Mr. Robertson said, goes to the heart of our case. The constitution apparently contemplates a chain of authority, one branch of the entire organization having authority and control over another branch of the organization. Now in the case of Local Union 778A, which is one branch, which apparently took part in connection with this labor trouble because its name was on a placard at the job site—we

want to know the name of each governing branch page 21 } having authority over Local Union 778A.

Mr. Robertson: Judge, I don't want to prolong the argument, but Mr. Mullen interposed there this was to coordinate the temporary units. Suppose you start out at the local unit and go up to District 50. District 50 of the United Mine Workers has its national headquarters in Washington with A. D. Lewis the top executive officer; District 50 of United Construction Workers has its national headquarters in Washington with A. D. Lewis the top executive officer. There you are. Two branches put on an equal level. Where do you go from there and how do you get there? That is what we want to know. There they are out like two branches of a tree; we think they come together up above there.

Mr. Bryan: We are not sure they are on an equal level. If United Construction Workers is a division of District 50, it is some indication they are not on an even level.

Mr. Robertson: I was just following out the illustration.

Mr. Mullen: We have repeatedly said there is no question of agency here. They are all part of one organization. We asked that specifically in the interrogatories. The union is the International United Mine Workers of America divided into districts, one of which is District 50. Equal page 22 } with District 50 is United Construction Workers.

Below them are the local unions. You have the same organization throughout business, chain stores, have it in the Government. I don't see where it is hard to understand.

Mr. Bryan: Do I understand you to admit for the record that there is an agency relationship between the United Mine Workers and United Construction Workers sufficient to hold the United Mine Workers liable for acts of United Construction Workers under the doctrine of *respondet superior*?

Mr. Mullen: There is no agency relationship.

Mr. Bryan: You said a minute ago there was.

Mr. Mullen: No, I said there was no agency.

The Court: No, you misunderstood him. He said no agency.

Mr. Mullen: Look at the answers we gave you before. They are specific.

Mr. Robertson: You are getting off the track. We asked you to name the steps. We want you to name them.

The Court: We understand what you want, Mr. Robertson.

Mr. Mullen: I will answer the question as I see fit. I am reading from the United Construction Workers rules:

"Any officer or member of a local union charged with an offense against the organization shall be tried by the local union Executive Board."

page 23 } "The decision of the local union shall be final unless loss of membership of the accused is involved, in which event an appeal may be taken to the International Executive Board within five days after the decision. Pending such appeal the decision of the local union shall be enforced unless the same is temporarily stayed by the National Director or the International Executive Board."

From the International Executive Board he can go to the International Convention. There is a clear statement of the course which any dispute takes. I don't think it is anything obtuse about that. That are named in the rules.



Mr. Bryan: Do you object to naming them specifically?  
Mr. Mullen: I named them just now.

Mr. Robertson: Then we ask that you name them in the answer to the interrogatory.

The Court: Do you object to filing a supplemental answer or stipulating what has been said here, that that may be added to it?

Mr. Mullen: Judge, ordinarily I don't object to a thing like that, but this has gone beyond any reason. They are carping criticisms of answers to questions we think are answered fully. When we brought up one objection to their questions they didn't want to have Your Honor pass on it but wanted to put it off. I want to give notice now on January 6, when we come up we are going to ask the Court to pass also on our objections to your questions inasmuch as you have insisted page 24 { upon taking up your objections to our answers and having them answered before the trial.

Mr. Robertson: We are not asking you to answer them before the trial; we are asking the Court to adhere to the procedure which has been formulated here before, to rule as far as the Court can in pre-trial conference on the questions the Court will require to be answered or modified or refuse to require them to be answered and reserve the rulings on the relevancy until we get into the trial.

Mr. Mullen: You mean the Court passed on what you said there without passing on the relevancy?

Mr. Robertson: It has been doing it ever since we have been coming up here.

Mr. Mullen: If you have the right to ask those questions and ask that we now be required to reframe our answers, we have an equal right as to your interrogatories and not be put off to the time of trial. We want to bring that up.

Mr. Robertson: You can't bring up anything you want, I guess.

The Court: Gentlemen, the Court refuses to require the defendant to amplify that answer.  
page 25 { Mr. Moore: How about consolidation, Your Honor?

The Court: Gentlemen, I am about ready to pass on the consolidation. The Court is of opinion that it would cause confusion and may cause delay and that it would be best to try this case separately and if you all will prepare a proper order—

Mr. Robertson: I will put that in this order I am working on.

The Court: There was also a motion to amend and non-suit.

Mr. Robertson: In view of the Court's ruling I don't know whether or not you gentlemen are going to press your motion to amend or non-suit.

Mr. Mullen: I wouldn't know. I will have to leave that to Fred.

The Court: Mr. Robert Pollard, if you will talk to Mr. Fred Pollard about that, it may be in view of the Court's ruling he will want to abandon it.

Mr. Mullen: I imagine he would. Of course, we note the exception.

Mr. Bryan: There is one other matter pending. In the interrogatories which the defendants propounded to the plaintiff we were asked as to whether the plaintiff—whether application had ever been made by certain labor organizations to become certified as the bargaining agent for the page 26 { employees of the plaintiff. That question was answered. Then the question was asked whether the National Labor Relations Board had ever, in fact, certified these labor organizations as bargaining agents for the plaintiff's employees. That question was answered. We asked the identical question back of each one of the defendants. I don't know the numbers of these interrogatories, but I suppose you remember the questions.

Mr. Mullen: I remember the questions and remember they were discussed very fully and the Court ruled on them.

Mr. Bryan: At the time the Court said it would not require the defendants to answer those questions, why then the answers which the plaintiff made to like questions of the defendants might be expunged.

Mr. Mullen: I beg your pardon; the Court ruled you had to answer them.

Mr. Bryan: But no final action has been taken on it. We would like to have those answers answered by the defendants; we think they are relevant.

Mr. Mullen: Your Honor, Fred argued that question. They are not pertinent so far as the defendant is concerned in the case of the plaintiff unless certain things had been done—I don't know the details of it. I don't handle our labor relations page 27 { matters, but he explained it very fully and Your Honor ruled on it and saw why there was a difference and why the question should be answered by them and not by the defendant. Now if the matter is going to be argued again, I would like for Fred to do so.

The Court: The argument pro and con was recorded in the record, was it not?

Mr. Mullen: Yes.

The Court: It may be best under the circumstances to continue this until January 6th and have the record written up and we will read the record back and see what discussion took place.

Mr. Bryan: I am not sure whether we were having minutes taken of those meetings or not.

Mr. Mullen: I am just wondering myself.

Mr. Bryan: That was one of the first meetings.

The Court: If it is not in the record the Court will have to hear you.

Mr. Robertson: I think I have enough pencil notes to recall it to everybody's memory.

The Court: Mr. Fred Pollard was one of the principal counsel in the case and I think it only fair that he be here to participate in it.

Mr. Bryan: I just want to bring it up because it ought to be disposed of.

The Court: All right, Gentlemen.

page 1 }

. . . . .

Transcript of a pre-trial conference in the above styled case before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, on January 6, 1951, at nine-thirty o'clock a. m., in chambers.

Appearances: Mr. Archibald G. Robertson, Mr. George E. Allen, Mr. T. Justin Moore, Jr., Counsel for complainant.

Mr. A. Hamilton Bryan, President of Laburnum Construction Company.

Mr. James Mullen, Mr. Crampton Harris, Mr. Robert N. Pollard, Jr., Counsel for defendants.

Mr. Welly K. Hopkins.

Mr. Harrison Combs.

page 2 } Mr. Robertson: If Your Honor please, as long as we are the plaintiff, I reckon we lead off in this conference.

The Court: All right.

Mr. Robertson: I am going to ask the Reporter to let the record show everybody that is here. Are you counsel in the case?

Mr. Hopkins: No, sir.

Mr. Robertson: Just as a spectator?

Mr. Mullen: They are down here with me helping in the case, but not going to appear in the trial.

Mr. Robertson: I just want the record to show why they happen to be here.

If Your Honor please, I made a notation here of several things which, according to my recollection, were to come up today. You remember a considerable time ago the Court ruled tentatively on granting a special jury and for us to bring the matter to the attention of the Court before the trial date.

The Court: Yes.

Mr. Robertson: Mr. Edwards, the Deputy Clerk, called me about it one day last week—this week—and I told him I would be here Saturday morning and I was going to take it up with your Honor then.

page 3 } The Court: All right. The Court is of the same opinion, will grant a special jury, but may assess the costs against the party asking for it.

Mr. Robertson: Mr. Fred Pollard has called me two or more times regarding how the case is to be reported and whether or not we wanted a daily transcript from the Alderson Reporting Company in Washington at a charge of thirty dollars per day plus \$2.00 per page for the original and three copies, plus 25 cents per page for any additional copies. I told him we would be willing to split it one third to us and two-thirds to them. I thought possibly if they had the original for the Court and one copy for each side it looked to me equitable by them getting the third copy and he said he said he was going to consider that and I suggested the whole thing go through Mr. Colton Williams as he was accustomed to dealing with them, it was in his jurisdiction, and Mr. Fred Pollard said he would talk to his clients and let me know.

Mr. Mullen: I see no reason why it should not be divided half and half. If we had to have separate stenographers, and all that, it would cost you at least 40 per cent of what this would be, maybe more. We see no reason why we should pay more than half of it.

Mr. Robertson: The only reason is that because every case I have been in—and there have been a number  
page 4 } where we had this kind of service—where there was more than one party they divided it on a pro rata basis, which would make it one and four. Mr. Fred Pollard said he didn't think that was fair. I then suggested two-thirds and one-third. He said he thought that was fair and he would recommend it.

Mr. Mullen: He talked it over with me and he had evidently changed his mind at the time he talked it over with me because he said he thought it should be half and half.

Mr. Robertson: Then he told me one thing and told you another thing.

Mr. Mullen: I said he changed his mind, which he had a right to do, of course, after considering it. I think it should be half and half.

Mr. Robertson: Very well, if you think that is fair, we will split it.

Mr. Mullen: I think it is fair.

Mr. Robertson: I think it unfair and unjust, but do it rather than quibble about any more non-essentials.

(Mr. Williams, the present Reporter, stated that he believed that the page rate was \$2.25 rather than \$2.00 as stated by Mr. Robertson.)

page 5 } The Court: What is next on the agenda?

Mr. Robertson: If Your Honor please, I would like to go back to that thing a minute. Will that entire transcript be charged to the losing party, or not?

The Court: I don't know.

Mr. Mullen: I don't think so. I don't think it is a Court cost. The Court doesn't have an official stenographer; this is private employment.

Mr. Robertson: It is ruled both ways in these cases.

The Court: I have never ruled on that point.

Mr. Robertson: Now, according to my recollection, the Court was going to announce at this conference its ruling on what portions of the minutes of the Executive Committee which were turned over to the Court the Court was going to allow, if any.

The Court: All right. Gentlemen, I have reviewed the minutes, which are voluminous, as you know—it was quite a task reading all of those minutes—and the Court has concluded not to grant Question No. 125 as asked for in the Interrogatories addressed to the defendant United Mine Workers of America, but will require the defendant United Mine Workers of America to answer the following question in

page 6 } lieu of Question No. 125 as originally addressed to the defendant United Mine Workers of America:

“Furnish a copy of the minutes which include specific reference to District 50, United Mine Workers of America, or United Construction Workers, affiliated with United Mine Workers of America, of all meetings of the International Board of United Mine Workers of America held between the

dates October 28, 1948, and August 4, 1949, and also since August 4, 1949."

Mr. Robertson: Could we agree here on the date when they will be furnished?

The Court: I don't think it is going to take too long, Mr. Mullen. I would suggest it could be done very easily within a week.

Mr. Mullen: As I understand, we are not to turn the minutes over to them, but we are—

The Court: Furnish copies.

Mr. Mullen: Certified copies of any pertaining to District 50 and to United Construction Workers?

The Court: Yes. I would say within one week from today.

Mr. Bryan: Will you give the dates again?

The Court: The same dates you had: October 28, 1948, to August 4, 1949, and also since August 4, 1949.

page 7 } Mr. Robertson: Now are you ready to go on to the next thing?

The Court: Yes.

Mr. Robertson: You remember I stated I would undertake to prepare the order on these Interrogatories, bringing it down through our last pre-trial conference. I prepared such an order and Mr. Moore, Jr., and I have compared it for accuracy and I think it is substantially correct. I wanted Mr. Bryan to check it before I submitted it to the other side. He has not had an opportunity to do that and therefore he hasn't checked it for accuracy. That is why I have not submitted it to counsel for the other side. I suggest we leave a copy with the Court and with other counsel. I assume you will not want to enter it today before you have had an opportunity to check it for accuracy. As far as I know, it is accurate. How many copies do you want, Mr. Mullen?

Mr. Mullen: I will take three, if you have plenty of them.

Mr. Robertson: All right. Now that is all I have on my list.

Mr. Mullen: Judge, when we were here the last time you asked if we wanted to take a non-suit in the case  
page 8 } brought here.

The Court: Yes.

Mr. Mullen: I don't think Fred has ever told you—

Mr. Robertson: I can't hear you.

Mr. Mullen: The Judge asked if we wanted to take a non-suit. Yes, we want to do that. We had to elect between the

one here and the one in the Federal Court. We will elect to take it here.

The Court: If you do that, you had better prepare an order.

Mr. Pollard: We will do that.

The Court: All right.

Mr. Mullen: If Your Honor please, Mr. Lewis has been summoned as a witness in this case—

Mr. Allen: By whom?

Mr. Mullen: By you—your side.

The Court: By the plaintiff.

Mr. Mullen: He was summoned for the 11th. When the case went over at our request we raised no question that the summons did not apply now; we raise no question about that.

Mr. Robertson: That is very generous. He sent word he would be here.

Mr. Mullen: Mr. Lewis is a very busy man. He is at this particular time really at the command of the executive officers of the United States Government. He is one of four labor leaders who, with a group of business men—Mr. Sloan, Chairman of General Motors; Mr. Fairless, of United States Steel; Mr. McCormick, of International Harvester; Mr. Brown, of Johns-Manville; William Green, Philip Murray, John L. Lewis and Mr. Hayes, President of the International Association—they have to meet all around the United States. In addition to that, he has to carry on this work of over 600,000 miners.

As an individual, he has no objection to testifying. What I wanted to see was if we couldn't stipulate as to what he would testify to be cause he is not a free agent at this time; he is being used in connection with preparation of the defense work and he is at their beck and call. There is nothing he could testify that has not already been covered in the Interrogatories. He knows nothing about this case whatever; never heard of it until suit was brought. I would like—and I think under pre-trial practice such matters are supposed to be entertained—I would like to ask counsel what they expect to prove by him to see if we can stipulate it.

Mr. Robertson: We won't agree to stipulate anything, if Your Honor please, and we will not state at this time what we expect to prove through Mr. Lewis. I would like to say this, that we tried literally for weeks and I think I am correct when I say months, to get personal service on Mr. Lewis at his home in Alexandria and couldn't get it. Finally, the officer nailed the summons on his door and my information is that he met Mr. Lewis on the street the following day and he acknowledged he had gotten



it and said he would be here. Now I don't see where Mr. Lewis is above—of course, I have expressed the opinion in these conferences he wouldn't be here, and I don't know why he is entitled to any more consideration than any other humble citizen just because he occupies a seat of the mighty.

I am perfectly willing to have it understood if Mr. Lewis will come on call of say a day's notice, or whatever the Court thinks is reasonable notice, but I don't see why Mr. Lewis should be permitted just to bow himself out.

Mr. Mullen: If Your Honor please, may I ask Mr. Hopkins as to Mr. Lewis—the way he is tied up?

The Court: Certainly.

Mr. Hopkins: I will be glad, Your Honor, to state the situation in reference to Mr. Lewis as we know it.

In the first instance, I think it could well be repeated he has no knowledge of the facts in this case either before, during nor subsequent to the incidents that seem to have given rise to this alleged cause of action. All that he knows about

it would be subsequent to the institution of the  
page 11 } litigation and that would be by hearsay in an administrative capacity, only. He could testify to no facts at all concerning this occurrence. Whatever matters are known to him would be those, and those alone, that are covered in the answers to the various interrogatories that have been propounded to the defendants here.

His position is such that his presence in Washington and other places is requisite, not only to the appropriate and proper administration of the organization that he heads, but to the individual members who constitute that organization, scattered in many jurisdictions. So his commitments administratively and his duties require as close attention as is possible to give, but in addition to that, as Mr. Mullen has stated to you, sir, his commitments not only to Government but to various leaders in industry are manifold, are constant, and are of uncertain date and duration.

That is evidenced I think, in the reference Mr. Mullen made to the fact that on last Wednesday evening he was committed and did attend, according to my personal knowledge and now proclaimed by the press, a meeting in New York at the Union League Club called at the behest of certain leaders in industry for the avowed purpose of public policy, that meeting being called under the auspices of Mr. Alfred P. Sloan, of General Motors, attended by Mr. Eric Johnson of the  
page 12 } moving picture industry, Mr. Wilson, of General Electric, Mr. McCormick of International Harvester, and Mr. Fowler, I believe, of the DuPont interests, and

others, for the avowed purpose of undertaking to obtain agreements that would run to the welfare of the public policy of this country in these times that is obvious to all of us requires attention.

That epitomizes some of the commitments he has. In addition to that, Your Honor, from day to day there is a constant flux and turn of events in Washington that require Mr. Lewis' attention, both personally and his advice, in reference to matters governmental pertaining to the freezing of wages, the setting of prices, the institution and putting into effect of various governmental agencies controlling the internal affairs of domestic economy of this country, and from time to time, sometimes in public, very often in person, he is requested to attend such conferences, and very often on short call. He undertakes to respond and to give his time and talent as opportunity allows.

Now certain gentlemen may figure that his advice is not well taken, but I say to you, sir, that it is much sought and is well heeded in many high places. He has no desire to evade any mandate of this Court or any legal writ that has been served upon him, neither has he ever avoided the service or acceptance of any writ—any legal writ of any page 13 } Court. He does not desire to do that now. We merely assert that if he had knowledge of facts or was a pertinent witness here of matters that were not otherwise covered we would not be here today making this statement that I am now making to Your Honor because obviously if it were pertinent and not provable by any other source he would be willing, both personally and professionally, to come and give such evidence as this Court might see fit to accept, but such not being the case, as we know it here, but his commitments and his duties being otherwise, we respectfully submit justifies Mr. Mullen and counsel for the defendants to make respectful inquiry of plaintiff's counsel, through the Court, as to what they do expect to prove through this witness, what he can and would testify other than that which is already available to them in the answers to these various interrogatories.

That being so, we respectfully request and I would, sir, in support of Mr. Mullen, ask these gentlemen what is it they expect to prove over and above that which is available to them. If they can so state, and will so state, and if it is within the bounds of reason, I take it we would, speaking for the defendants here, undertake to arrive at that stipulation, and that is not only for the convenience of the witness Lewis, it is for the convenience of this Court. It runs to the pro-

page 14 } priety of orderly procedure I am sure, as Your Honor recognizes, to shorten the trial, and it is for those reasons, and those reasons alone, not for delay and evasion, that we appear here today and make this request.

I think that epitomizes our position, Mr. Mullen.

Mr. Robertson: Now I don't know whether that speech wound up with a rhetorical question or an actual question, but you have the right to close and I want to be heard and I promise not to make any such speech as Your Honor has heard.

We have gotten far afield from the record. So I think I am justified in saying there are many people in the ordinary walks of life who think Mr. Lewis regards himself as above the law and it is common talk around Richmond that he will never be here to this trial because he wouldn't want to come. Now he is not above the law and, representing just a garden variety Virginia plaintiff, we don't think he has got any right, through his counsel or anybody else, to bow himself out in any such high-handed way as he is now trying to do. Who says his testimony here is not needed? Is he to judge that or the Court? Is his counsel to tell the Court that, or his counsel to tell counsel that, and say that he knows nothing about it?

I don't care whether he knows the facts or not. I dare say there is not a living man in America that knows page 15 } as much as he does about the entire relationship of these three defendants because he dominates and strides above all of them, if I may follow the press and some of the Court decisions, and to say he is so important that he can't attend a Court of this Commonwealth when he lives up here at Alexandria, when he is within two hours and a half automobile attendance from here, when he is within forty-five minutes airplane time, when he can be reached constantly by telephone, I think is as high-handed a proposition as I ever heard. We want him here available to us for cross examination as a hostile witness regarding the entire relations of these three defendants. That is all I have to say no matter what anybody else says.

Mr. Allen: I concur in exactly what you say. I might add this. With the greatest respect for this Court and every other Court of this Commonwealth, notwithstanding the late provision for pre-trial conference, it is a matter for counsel to stipulate or not stipulate on a subject and the Court has no power or authority under our practice to compel counsel to stipulate against their judgment. We would do it if we could in justification to our client, but if we did not feel that

way about it, then we just don't think we ought to be required by the Court to stipulate.

Mr. Robertson: Let me add this, and I promise not to say anything more. I have no desire to make Mr. Lewis come here and sit through a trial that may last several weeks. I am perfectly willing to agree Mr. Lewis may on any reasonable notice come and be put on the stand and testify and leave, like we do under our practice all the time, but I am not willing to be put in the position where he is such a big shot he finds it inconvenient to come to this Court or he is so indispensable to our national economy that the whole thing will founder if he spends several hours in Richmond.

Mr. Mullen: If Your Honor please, we did not ask that his testimony not be taken. We asked them simply to see if we could agree to stipulate for the reasons that have been very fully stated here. Of course, Mr. Robertson has made a great many slurring remarks about Mr. Lewis during these conferences. He has no basis for them whatever. Nor does Mr. Lewis want to evade anything that is proper.

If they won't stipulate, of course, I know Your Honor can't force them to stipulate. It is a matter put up to them, I thought with courtesy to all, in a hope we could agree. Of course, we haven't been able to stipulate anything. I have made several propositions to stipulate and they have all been turned down.

I might say this, that really the man they want, I imagine, is the real administrative International officer, who would be much more familiar with the organization and with the matters they have asked about in these interrogatories than would Mr. Lewis and I was wondering if they would let him be substituted—Mr. Kennedy. He is the administrative officer.

Mr. Robertson: He wouldn't carry the weight Mr. Lewis would. You know that as well as I do.

Mr. Mullen: Yes, he would.

The Court: He is Vice-President, Tom Kennedy, isn't he?

Mr. Mullen: Yes.

Mr. Bryan: Do you agree to have Mr. Tom Kennedy here?

Mr. Mullen: I think Mr. Kennedy is going to be here.

Mr. Robertson: That wasn't the question. Will you agree to have him here?

Mr. Mullen: Do you want to trade Mr. Lewis for Mr. Kennedy?

Mr. Robertson: No.

Mr. Harris: Let's decide one question at a time, then.

The Court: Do you all care to comment on that?

Mr. Robertson: We won't agree. We just asked that question to show where all this cooperation was coming from the other side.

Mr. Bryan: I don't see how it is possible to page 18 } stipulate in advance exactly what will be asked Mr.

Lewis. It will largely depend on the way the trial develops. It has been our experience from time to time that you will ask a witness a question about the inter-relationship between these defendants and the witness will simply say; "I don't know; you will have to find that out from Washington." The only way to avoid that situation is to have one of the top ranking officials or to have the top ranking official present.

The Court: Gentlemen, if counsel won't agree to stipulate I don't see it is anything the Court can do. If you all care to stipulate, it is satisfactory with the Court.

Mr. Mullen: What I would like to do would be to be able to fix a day that Mr. Lewis could be here so he could make his other engagements. I don't know how long this case is going to last. It is going to take maybe two weeks just to read their depositions and interrogatories and have objections made because there are already hundreds of pages of depositions and nearly every question has an objection to it. If we could fix a time and say we would have Mr. Lewis here—the case opens on the 22nd; have him here on Monday the 29th—

Mr. Robertson: We can't do that, Your Honor. For instance, I think Mr. Mullen is all wrong in his statement as how long it is going to take to read these depositions and these interrogatories and answers. page 19 }

The Court: May I ask how many pages of depositions there are? I haven't looked at them.

Mr. Robertson: I haven't counted them; I should say three or four hundred, and I think that phase of the case, unless they string it out, is going to move much faster than Mr. Mullen said. I am unwilling just to take a guess at it and agree to that. I will gladly agree to give them reasonable notice.

The Court: How about two days' notice, Mr. Mullen?

Mr. Mullen: That would be satisfactory.

Mr. Robertson: That is all right.

Mr. Hopkins: At least that much, if we can.

The Court: I will see how the trial is running and when we get into the trial we can then better tell.

Mr. Mullen: If you give us two days, that will be all right.

The Court: He can testify and depart.

Mr. Mullen: I have just referred to the summons; I assume this takes the place of his coming here on the 22nd?

Mr. Robertson: Yes, that is right.

The Court: That is agreed among counsel.

page 20 } Mr. Mullen: The second matter I think well to  
bring up is this. We have quite a number of witnesses to bring here. I think to put on their case in chief is going to be pretty long, as Mr. Robertson says. I know it took me several days to read what is already here. When it is read and commented on by you in the trial it will take a long time. We don't want the expense of having those men sitting here or disrupting their work. What we would like to see if Your Honor will not agree that when they put on their case in chief we will then have an adjournment for one day so we can bring our people here.

Mr. Robertson: We will agree to that.

The Court: All right.

Mr. Mullen: Now, if Your Honor please, we want to file some amended grounds of defense and would like to have a date fixed by which we can do it.

Mr. Robertson: If you have got them ready we would like to see them now.

Mr. Mullen: I do not. We didn't discuss it until—

Mr. Robertson: You are not putting us on notice for a request for a continuance, are you?

Mr. Mullen: No.

page 21 } The Court: The Court is very pleased with the  
cooperation received from counsel on both sides in expediting this matter.

Mr. Mullen: I don't mind telling you they are purely technical.

Mr. Robertson: What are they?

Mr. Mullen: Some reference to certain sections of the United States Constitution.

Mr. Robertson: They don't worry me.

The Court: Will you file them by Wednesday of next week?

Mr. Harris: Judge, what we plan to do, Mr. Combs has a brief on that subject; I catch the plane back to Alabama in the morning and we had planned for him to send me my brief and I will draft them and send them to counsel. Now he is sending it by air mail and I won't get it until Tuesday.

Mr. Robertson: Will you send me a copy of it at the same time so we can be preparing ourselves on it?

Mr. Harris: They will be tentative until Mr. Mullen approves it. I will send you a copy of it; I don't mind you seeing it.

The Court: What is the earliest time you can get it?

Mr. Mullen: We would like to have until next Friday or Saturday.

page 22 } The Court: How about Friday?

Mr. Mullen: We will do that.

Mr. Robertson: Of course, we are not agreeing they can file them. They can lodge them subject to all proper objections by the plaintiff and then the Court will rule whether they will be filed or not. I am not waiving any rights.

Mr. Mullen: I think any time prior to trial you can file amended grounds of defense if it doesn't take you by surprise.

The Court: It is in the discretion of the Court.

Mr. Robertson: It is largely in the discretion of the Court and we simply want to see what they do.

The Court: In other words, you reserve the right to object to the filing; may object or may not.

Mr. Robertson: I think I can cover my position, that I don't agree to anything that I don't say I expressly agree to.

Mr. Mullen: In other words, you reserve the right to object to the filing?

Mr. Robertson: Yes.

Mr. Harris: Judge, those defenses will not be merely on the Constitution, but also on any applicable Federal law. There are some Federal questions we want to raise under the Norris-LaGuardia Act and under the Taft-Hartley page 23 } Act and the Clayton Act, with some of the decisions that may be of importance.

Mr. Robertson: I would like—may save you some work—to call your attention to this fact, that it has been agreed of record in these pre-trial conferences that this case is governed so far as the substantive law is concerned by the law of Kentucky and so far as the procedural law is concerned, by the law of Virginia, and the stenographic record of these pre-trial conferences will show that fact. I mean it may save you some hours work if you bear that in mind.

Mr. Mullen: I don't understand that precludes us from raising any Federal question—

Mr. Robertson: I don't either.

Mr. Mullen: —and having it a part of the record. In fact, I think in several cases in the conferences we have raised such Federal questions.

Mr. Robertson: When are you going to get us the grounds of defense?

The Court: On or before Friday. Friday is the 12th. Can you gentlemen think of anything you can stipulate to shorten this trial any and save time?



Mr. Bryan: I have one question, Your Honor. We are having photo copies made of certain portions of the United Mine Workers Journal and other journals which page 24 } we think will help to prove our case. Will there be any question raised, Mr. Mullen, as to the accuracy of those copies?

Mr. Mullen: Not if we are given opportunity to compare them.

The Court: I thought that was agreed.

Mr. Allen: That was stipulated at a former hearing.

Mr. Mullen: Once more, I want to say right there those morgues, as they are called, of the newspapers have been in my office ever since we filed the answers and stated they were available for your inspection.

Mr. Bryan: That is the first I knew of that.

Mr. Mullen: The right is set out fully in the papers and that they were at my office and I wondered why you hadn't been there. That is why I brought it up.

Mr. Mullen: At the last hearing after they had objected—I gave notice at the last conference we had inasmuch as they had taken up our answers and asked the Court to say whether they were complete or incomplete, that I would do the same with regard to theirs. I have just a few objections to them and would like now to take them up. I furnished copies of those objections at the time it first came up.

page 25 } Mr. Robertson: If Your Honor please, I don't object to Mr. Mullen stating any objection that he has got—as many, as often and as long as he wants to, but I understand and have understood and I think the Court has said here over and over and over again that except within the broad scope of the answers that the Court has already directed to be made, that the Court was reserving its rulings on all objections by all parties as to the competency of any question or answer or other testimony until the progress of the trial and all these questions and answers that the Court has up to this time ruled must or must not be answered, that they are all subject to the final ruling of the Court in the trial, and if you change your mind that you rule it all out or all in.

The Court: If I gather what Mr. Mullen is about to say, he is attacking the sufficiency of the answers, the same as Mr. Bryan did.

Mr. Mullen: Exactly.

Mr. Robertson: All right, sir.

The Court: All right, Mr. Mullen; go ahead.

Mr. Robertson: Will you tell me which ones you refer to?

Mr. Mullen: I have furnished you all with copies.

Now our first objection is to Answer 1(d).

Mr. Robertson: Which interrogatory is that?  
page 26 } Mr. Mullen: Of course, you have your first answers and then further answers. This is the original one that you filed. Later on, it reaches the others.

The Court: How many do you have?

Mr. Mullen: It is very short.

Mr. Robertson: You are talking about the answers of Laburnum?

Mr. Mullen: To the interrogatories furnished.

Mr. Robertson: Is it headed this way: "Answer of Laburnum Construction Corporation to Summons of the Defendants to Interrogatories"?

Mr. Mullen: Correct.

Mr. Robertson: And it is 1(d)?

Mr. Mullen: 1(d) is the first one.

(Mr. Mullen read the question and answer.)

The first sentence answers the question; the rest of it is surplusage; doesn't refer to that contract. That contract was for a specific amount and nothing else and for a specific piece of work and they have gone outside of that and have put in some other argument.

The Court: Mr. Mullen, I think it was understood that the question of surplusage—that we would take that up at the trial. Is that my understanding?

Mr. Robertson: It is mine.

The Court: We went into one or two of these on page 27 } previous hearings and that was my recollection.

Mr. Allen: That is right.

Mr. Mullen: That is surplusage, if Your Honor wants to take it up later. The next is 1(f).

The Court: I believe that is the same—

Mr. Mullen: He again answers the question and adds a lot of surplusage by way of argument and additional matter in it.

The Court: All right.

Mr. Mullen: The same thing as to 1(h).

The Court: I see.

Mr. Mullen: The first sentence is the full answer to it; the rest of it is not. Next is 2(d).

The Court: It is surplusage marked in the column here.

Mr. Mullen: Yes, the first sentence answers the question; the rest of it is just trying to get in evidence they might not be able to get in any other way.

The Court: Then, if I can help you, the next one here is 2(f).

Mr. Robertson: I have a question mark after every one of those; they raised all of those questions before.

Mr. Allen: And you ruled just as you rule now.

Mr. Mullen: I beg your pardon; I haven't taken them up before. You have it because I furnished you with page 28 } a copy of my objections and we didn't go through them.

In 2(h) we have the same thing.

Now 8(a) is not responsive to the question.

(Mr. Mullen read the question and answer.)

That wasn't the question; we asked them if they were operating—

Mr. Robertson: It is the same old story of ruling on it when we get in the trial. Whether they were or weren't would be a question of law for the Court.

The Court: No, I think this is a little different from surplusage.

Mr. Robertson: All right, Your Honor.

Mr. Mullen: We were required to amend our answers.

The Court: In other words, you think that answer ought to be yes or no?

Mr. Mullen: Yes.

The Court: Do you want to address yourself to that?

Mr. Robertson: I am perfectly willing to answer it yes, we were.

The Court: It calls for a yes or no answer, as I read it.

Mr. Robertson: All right, the answer is yes, right now.

Mr. Mullen: You are going to answer that yes? page 29 } Mr. Robertson: Yes.

Mr. Mullen: Now 12(a) in the further answers.

(Mr. Mullen read the question and the answer.)

The question was who informed whom that the workmen were members of the local union of A. F. of L. Now in the course of it he says Mr. Bryan informed them, but just uses general terms as to others. Either he knows or doesn't know and he should so state in answer to that question. Our question was for specific names of those who told whom they were members of the A. F. of L. union.

Mr. Robertson: I think that has already come up in another phase of this litigation. I think that is an answer to the question. It pins the responsibility right square down on Bryan. It doesn't call the roll of our witnesses. I don't understand that we are required to do that and I understand it came up here, according to my recollection, in the other pre-trial conferences, that we didn't want to do that, among other reasons, for the fact that the pressure—and I

speak by virtue of my personal knowledge of personal trips to the locality where this thing happened—we think that is necessary to protect these men against that and I don't know of any legal reason that he has a right to call for it in any more detail than here, certainly not before the time of the trial, and we have got that legal reason and that practical reason for not doing it.

page 30 } Mr. Mullen: We have been compelled to give the names of everybody you asked about, names of some 200 members of the local union of United Construction Workers.

Mr. Robertson: We gave you the names of all our workmen. You are having a witness conference out there in Kentucky today and you can question them.

Mr. Mullen: Why do you think we have it?

Mr. Robertson: I was just told so.

Mr. Mullen: I suppose you have some spies out there telling you everything that happens.

The Court: The Court is only concerned with the question here.

Mr. Robertson: I happen to know you have—not you but the defendants out there had theirs spying on us.

Mr. Mullen: I think if that is true—I don't know, but it would be kind of the kettle calling the pot black.

Mr. Robertson: It might be. Sometimes you have to fight fire with fire.

Mr. Mullen: This is important, who told whom your employees were members of the A. F. of L. union.

Mr. Robertson: I think if you will read the depositions you would find they are all answered in there. You haven't read them, have you?

page 31 } Mr. Mullen: I read part of them; I got sleepy

Mr. Robertson: Go ahead and read the other part and you will find it in there.

Mr. Mullen: That is all I have to say on that particular question.

The Court: Do you gentlemen have anything further to say?

Mr. Allen: Yes, let me say this. Our right to call for the membership in the union and locals and the officers of the union and things like that are different from the right to demand a list of witnesses. Under all the rules applicable in pre-trial conferences that we have now or every had in this country, no lawyer has been required to give the list of the names of his witnesses and it has been expressly ruled on in the Federal cases where the pre-trial conference has been in operation for ten or twelve years, that you can't make the other side give you the names and the addresses of its

witnesses, and that is just what he is calling for: The names of the persons who told whom.

Mr. Robertson: We don't want you to put the heat on them out there and make them fade out.

Mr. Mullen: We are dealing with interrogatories now and the interrogatories have been argued by you so you could get any information you wanted under them. You have argued

page 32 } that from time to time very fully and the ques-  
tion where you have alleged in your notice of mo-  
tion that whom was told by someone that these em-  
ployees were members of the local A. F. of L. union, we have  
a right in the interrogatories to ask who told whom that. That  
is an important question.

The Court: The Court will refuse to require the plaintiff to amplify that answer.

Mr. Harris: May we reserve an exception?

The Court: Of course.

Mr. Mullen: It is understood we are reserving all excep-  
tions.

The Court: To all adverse rulings, as I understand.

Mr. Mullen: Now question 13(a). That was asked as to the name of the Kentucky State Officer to whom the plaintiff is alleged to have appealed for assistance. They answered that and went on with a long argument which undertakes to bring in hearsay testimony, among other things.

(Mr. Mullen read the question and answer.)

We submit that is not an answer to that question.

The Court: Read the question again.

Mr. Mullen: The question is what is the name of the Ken-  
tucky State Police Officer to whom the plaintiff allegedly ap-  
pealed for assistance.

page 33 } Mr. Robertson: All that brings up the question  
whether or not it is surplusage.

The Court: He mentioned Howard, didn't he?

Mr. Mullen: Yes, but then tries to get in all that—

The Court: That is surplusage.

Mr. Mullen: They know they couldn't testify to that and they are trying to get it in indirectly.

The Court: I will pass on that along with the other ques-  
tions.

Mr. Mullen: The final one is 14(a) in the original answers.

(Mr. Mullen read the question and answer.)

Now I will come back to the question; they haven't an-  
swered it.

Mr. Robertson: No, if Your Honor please, that comes back down to surplusage. That tells the story. That story is repeated in their own depositions which you attended the taking of. That is our answer to that question. That is all the answer we have got. If it is not in there, it didn't occur.

Mr. Mullen: It is not responsive to the question at all.

Mr. Robertson: It certainly is. Like some of your answers, we didn't like the answers.

page 34 } Mr. Mullen: Let's take each one up and see:  
"What were the bids, if any, made by the plaintiff on such contracts?"

Mr. Robertson: Which contracts?

Mr. Mullen: Contracts for work which would have resulted in large profits to plaintiff; dealing with something speculative now.

Mr. Robertson: We have the Virginia decisions on that. It is not speculative and they made no bids other than those.

Mr. Mullen: I thought you said Kentucky law governed it.

Mr. Robertson: Under the Kentucky law, too.

Mr. Mullen: You haven't answered that question; "What were the bids, if any, made by the plaintiff on such contracts"?

Mr. Robertson: There weren't any except such as shown there.

The Court: Then it would be none, except as shown in the answer?

Mr. Mullen: The answer shows no bids. Your answer is you either made bids or didn't make bids.

Mr. Bryan: "At page 14 of the notice of motion for judgment it is alleged and further caused plaintiff to lose other contracts for work which would have resulted in large profits to plaintiff." I think that is the answer.

Mr. Mullen: I don't. Go further down. "What bids, if any, were made by the plaintiff on such contracts? On what basis were such bids made?"

Mr. Bryan: What other contracts?

Mr. Mullen: The contracts you claim you lost?

Mr. Robertson: That is our answer and the only answer we have.

Mr. Mullen: You haven't answered that.

Mr. Robertson: The Court can rule on it when we come to it. I can tell you no other bids except these.

The Court: May that be the answer to the question?

Mr. Bryan: What is that?

The Court: No other bids except those set forth in the answer.

Mr. Bryan: I would have to check my record to be sure that is absolutely correct.

The Court: Let the Court rule and this is the ruling of the Court, that the plaintiff answer that question.

Mr. Bryan: What question?

The Court: What were the bids, if any, made by the plaintiff on such contracts.

Mr. Mullen: If they did make any bids, on what basis were such bids made? He can answer that.

page 36 } Mr. Robertson: I told you, subject to correction, there was nothing else except as set out in that answer.

Mr. Mullen: I know that, but I want it on paper.

Mr. Robertson: I don't blame you.

The Court: The same ruling in regard to that question.

Mr. Mullen: "What contracts, if any, is it alleged defendants caused plaintiff to lose on which the plaintiff didn't bid?"

Mr. Robertson: Subject to correction, none except as shown in that answer.

The Court: Same ruling.

Mr. Mullen: That is all I have.

Mr. Robertson: When you make it look like we are quibbling I want to assure you we are not.

Mr. Mullen: I know you are not, but I want it in the evidence.

Mr. Bryan: I have one other thing. With further reference to these photo copies we were talking about I am not sure which copies you have in your office. We have had some copies made up probably you don't have in your office and can't be obtained anywhere except from either the Department of Labor Library or the Congressional Library.

Mr. Mullen: I have whatever is in existence.  
page 37 } I have the bound volumes of those magazines you all called for. Whether they are complete, I don't know. I think perhaps you will agree that they are not complete.

Mr. Bryan: The point I am trying to make is we have photo copies of some things that you probably don't have at your office. Will any question be raised as to the accuracy of those?

Mr. Mullen: If you furnish them to us, we will have them examined at the same source you got them from.

The Court: As I understood at the previous hearing, you would have photostatic copies made and you would turn them



over to Mr. Mullen and he would have them checked and, if accurate, there would be no objection.

Mr. Bryan: I just don't want to have any misunderstanding.

The Court: I think it would be well to get with Mr. Mullen the first of the week.

Mr. Bryan: It was suggested we have some reporter go to Washington and copy portions of the articles, but we didn't do that.

Mr. Mullen: We won't stand on photo copies. We will compare them, and we don't object to the accuracy—

The Court: But reserve the right to object to the admissibility?

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page 1 }

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Transcript of a pre-trial conference in the above styled case before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, on January 15, 1951.

Appearances: Mr. Archibald G. Robertson, Mr. George E. Allen, Mr. T. Justin Moore, Jr., Counsel for complainant.

Mr. A. Hamilton Bryan, President, of Laburnum Construction Company.

Mr. Fred G. Pollard, Mr. Robert N. Pollard, Jr., Counsel for defendants.

page 2 } Mr. Fred Pollard: Judge, at the hearing at which

I was not present on January 6th the defendants said they would like to amend their grounds of defense and the order of the Court was that it should be filed not later than the 12th of January, and it was filed by that time and copies were served on the plaintiff and the additional defenses are two short defenses which raise Federal questions, but which would not require any new evidence to be introduced by either party, and as I understand the rules of procedure as laid down by the Supreme Court of Virginia the grounds of defense can be amended in the discretion of the Court, and therefore we respectfully request Your Honor to enter an order permitting these defenses to be filed.

Mr. Robertson: If the Court please, the plaintiff opposes the filing of these additional defenses. The Court will recall it has been agreed of record by counsel for all parties that this case is controlled by the substantive law of Kentucky and the

procedural law of Virginia and this is an attempt at this late date to inject into the case Federal statutes that are not properly in this case to change the theory of their defense and to confuse the issues and we think it amounts to a misjoinder of defenses, and we oppose it for all the reasons I have stated.

The Court: Unless you have something further page 3 } to say, I will allow them to file the additional grounds of defense.

Mr. Robertson: We note the exception to protect the record.

Mr. Allen: I think we should also object upon the ground that, irrespective of what view that you take of the merits of the defenses, they come too late; the pleadings have long since been made up and this case is scheduled to begin trial on Monday and is scheduled to require three weeks and we think that the filing of grounds at this time comes too late, and we think also that there is nothing in any of the grounds that is applicable to the facts of this case, and, of course, we note an exception to Your Honor's ruling.

Mr. Fred Pollard: Judge, I understood you to say you would permit the defendants to file these grounds of defense, but you would not rule at this time as to whether or not the defendants could rely on these defenses at the trial. If you are not going to let us rely on them, I don't see your purpose in allowing us to file them.

The Court: The Court may allow you to rely on them at the trial. The Court is not advised as to what pattern this trial is going to take and will, of course, reserve its opinion—

Mr. Fred Pollard: Then you will not allow us to page 4 } amend the grounds of defense?

The Court: I am permitting you to amend the grounds of defense. That does not mean the Court may not during the trial rule they are not applicable to this case.

Mr. Robertson: It is nothing to rule on now; there is no evidence here.

Mr. Fred Pollard: You are allowing us to amend the grounds of defense?

The Court: Yes.

Mr. Fred Pollard: And all you are saying you don't know at this time whether or not it is a good defense?

The Court: That is true. I haven't passed on any of your defenses.

Mr. Fred Pollard: There is one part of the record at the pre-trial conference of January 6, 1951, I would like to bring to your attention. Beginning on page 22 Mr. Harris said:

“Mr. Harris: Judge, those defenses will not be merely on

the Constitution, but also on any applicable Federal law. There are some Federal questions we want to raise under the Norris-LaGuardia Act and under the Taft-Hartley Act and the Clayton Act, with some of the decisions that may be of importance.

"Mr. Robertson: I would like—may save you some work—to call your attention to this fact, that it has been page 5 } agreed of record in these pre-trial conferences that this case is governed so far as the substantive law is concerned by the law of Kentucky and so far as the procedural law is concerned, by the law of Virginia, and the stenographic record of these pre-trial conferences will show that fact. I mean it may save you some hours work if you bear that in mind.

"Mr. Mullen: I don't understand that precludes us from raising any Federal question—

"Mr. Robertson: I don't either.

"Mr. Mullen: —and having it a part of the record. In fact, I think in several cases in the conferences we have raised such Federal questions."

Mr. Robertson: Are you trying to argue I have conceded some point there because I haven't?

Mr. Fred Pollard: Judge, I just bring this to your attention that the record speaks for itself.

Mr. Robertson: They can raise it now; they raise it by asking the Court to allow them to file the grounds of defense and I think the record shows it, and I don't think it is proper to say we are trying to say you are getting away with anything.

Mr. Fred Pollard: I am not trying to get away with anything.

Mr. Allen: As I understand it, Your Honor, will page 6 } withhold your ruling thereon. It may develop upon the trial from circumstances that may be shown and technicalities that may arise and complexities, and so forth, that the pleading came late. As I understand, you are reserving all of those decisions, as has become the practice now almost invariably in the Federal courts and in some cases in the State courts. You are allowing them to file them. As to what you are going to do with them later on, whether they are going to be permitted to rely on them on any ground is another question.

The Court: That is my understanding.

Mr. Fred Pollard: Judge, that is a different understanding from the one I just asked you about.

The Court: If I understood you correctly, Mr. Allen, you stated that the Court was permitting the defendants to file the amended grounds of defense and during the trial the Court would reserve the right to pass on whether or not they could rely on these grounds of defense.

Mr. Robertson: That covers everything under the sun.

Mr. Fred Pollard: And it is also my understanding by relying on them that these two additional defenses are in the same position as the original seven defenses.

The Court: The Court has not passed on any of page 7 <sup>1</sup> the defenses relied upon by the defendants and I am advised that in the original grounds of defense there were seven defenses set out—

Mr. Fred Pollard: There are eight.

The Court: Now the Court is permitting the defendants to file an amended ground of defense which includes two additional grounds. That makes ten grounds in all and the Court has not passed upon whether or not any of the grounds are good, but will do so when the proper time comes during the trial.

(Discussion off the record.)

Mr. Bryan: I would like to take up this question in connection with the trial of the case. When the various depositions were taken the defendants always took the position that they were entitled to each have one representative present upon the trial, that there were three separate defendants. Of course, they are closely allied together—

Mr. Fred Pollard: That is a matter of proof.

Mr. Bryan: —in such a way it might be treated as one organization or one defendant. Now at the trial of this case I would very much like to have present in the courtroom a boy named Maynard Regan, who is the Chief Clerk. He will be a witness—

The Court: For whom?

Mr. Bryan: For Laburnum Construction Company, page 8 <sup>1</sup> the plaintiff, but he has done a lot of work in connection with helping with various papers and so forth and I would want somebody there in that capacity. He is the best man I have got for that. I think it would facilitate the trial and make it lots easier.

The Court: Do you gentlemen care to comment on that?

Mr. Fred Pollard: Yes, sir. We couldn't agree to that. Of course, we would be willing to limit ourselves to one representative if they would be willing to limit themselves to one.

The Court: The general practice is to allow one representative of each party to be present in court.

Mr. Allen: It is entirely within the discretion of Your Honor, as I understand the law, to determine whether under the peculiar circumstances this special assistant to Mr. Bryan should stay in court.

Mr. Robertson: We can adjourn and take time, if necessary, to get the papers together. I think it is a fair proposition, one representative to each side.

The Court: That is the general rule. If you gentlemen can agree otherwise, it is satisfactory to the Court.

Mr. Fred Pollard: Your Honor, I understand that each of the defendants is entitled to one representative.

page 9 { Mr. Bryan: You mean you expect to have three there?

Mr. Fred Pollard: I don't know what we expect to have. We insist we have the right to have three.

The Court: As presently advised, there are three defendants. I don't know what the evidence will prove, but there are three defendants as far as the record discloses and each defendant would be entitled to one representative.

Mr. Robertson: I submit without reference to either Mr. Bryan or Mr. Allen, that is the rule, I think. If they differ with me, I would like to have them speak.

Mr. Allen: I don't differ with Mr. Robertson on that, but I don't think this is the ordinary case. The record itself so far shows that the cooperation between these defendants and the connection is so close that it is almost one and the same.

Mr. Fred Pollard: Judge, I don't think it is proper for Mr. Allen to be up here arguing the case at this time.

Mr. Robertson: Judge, will you let me speak to my associates for a minute?

The Court: Yes.

(Mr. Robertson and his associates retired from chambers and then returned.)

page 10 { Mr. Bryan: I was just thinking about the mechanics of it; it would make it a whole lot easier to have somebody who knew about it.

Mr. Robertson: We are in accord; you will have three, we will have one.

Mr. Fred Pollard: Now I would like to bring this up. Inasmuch as there are three defendants, we would like to have the right—I don't know that we would do it—for each defendant to have its own counsel and, as such, each counsel would have the right to cross examine.

Mr. Robertson: If I was the Court I wouldn't rule on that until you get there. Whenever I thought the witness had been properly cross-examined, I would cut it off and when I thought he hadn't I would let it go on. After all, this is a garden variety of tort action.

Mr. Allen: But, Your Honor, we should certainly object to Mr. Robertson cross examining a witness that is put on by the United Construction Workers and then for Mr. Pollard to have the same right to cross examine that witness that we have. I don't think that that would be a fair way to conduct the trial.

Mr. Fred Pollard: If you want to drop two of the defendants, that is all right with us.

Mr. Allen: I think the Judge can pass on that when the time comes.

page 11 } Mr. Robertson: I think we are just setting up straw men to knock them down. When you get to the end of a fair cross examination and keep trying to go over old straw I think the Court will quit it and the counsel will suit it rather than irritate the Jury. I think we are making trouble out of nothing.

The Court: We all want to attempt to expedite the trial of this case.

Mr. Fred Pollard: I want to point out this. Say the cross examination of Mr. Bryan may take two days and may go into several hundred pages, I understand the law to be that only one attorney for the same party may cross examine. It may be we would like in planning our work for Mr. Mullen to cross examine on one phase, Mr. Harris on another and maybe I on another.

The Court: There would be no repetition?

Mr. Fred Pollard: No.

Mr. Robertson: I suggest you just defer your ruling on that and rule what is right when the situation arises.

The Court: That probably would be the advisable thing to do rather than rule at this moment, but Mr. Pollard has stated there would be no repetition, that your request may be that you cross examine on one point, Colonel Harris examine on another point and maybe Mr. Mullen would want to  
page 12 } cross examine on another point and there would be no repetition.

Mr. Fred Pollard: Yes, sir, there would be no repetition.

Mr. Bryan: You all represent all three defendants, don't you?

Mr. Moore: You are counsel of record for all three defendants.

Mr. Fred Pollard: So does Colonel Harris.

Mr. Moore: And it is so stated in the order of the Court.

The Court: I don't recall.

Mr. Robertson: Yes, sir, that is right; I told them to put it that way.

Mr. Fred Pollard: That is true, but each defendant is entitled to an attorney.

Mr. Allen: Not if he employed a firm of attorneys or two or three firms to represent that one client. We have run across that a lot of times.

Mr. Robertson: I still think you are making trouble over nothing.

Mr. Allen: I say to pass on it when the time comes.

The Court: You gentlemen may look into the matter and see if you have any authority and submit it to me at page 13 } that time. Anything that would be helpful to the Court will be appreciated.

Mr. Bryan: We don't want our witnesses harrassed by a series of cross examinations by a dozen lawyers.

The Court: Do you care to comment any further, Mr. Pollard?

Mr. Fred Pollard: No, sir. We would say in any cross examination we have no desire to create any repetition.

(Discussion off the record.)

Mr. Robertson: It is very obvious—you can see what is coming up there. I can't remember the case, but I think Mr. Allen knows all the cases, and Mr. Moore. I think there is a case in the Court of Appeals that approves the practice of where there are several defendants of allowing one strike, and I think they put it on the ground I stated: Suppose you had five hundred defendants, would you allow five hundred strikes?

Mr. Allen: I know the Court of Appeals never recognizes but two sides of a case because I have had that experience.

The Court: As presently advised I don't think you will have any additional strikes. The defendants will have the same number of strikes as the plaintiff. That certainly has been the practice as far as I know. In other words, here we will have twenty men, it being a special jury. You page 14 } draw sixteen of those twenty or vice-versa—I don't think it is error either way—and then the plaintiff strikes two and the defendants strike two. That leaves twelve in the box to try the case. Unless you all can show me that the Court is in error there, I think that is the proper procedure

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TRANSCRIPT OF PROCEEDINGS.

VOLUME I.

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Received and Filed Aug. 16, 1951.

Teste:

WILBUR J. GRIGGS, Clerk  
By E. M. EDWARDS, D. C.

Virginia:

In the Circuit Court of the City of Richmond.

Laburnum Construction Corporation, Plaintiff

v.

United Construction Workers, Affiliated with the United Mine Workers of America; District 50, United Mine Workers of America, and United Mine Workers of America, Defendants

The above-entitled matter came on for hearing before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 22, 1951, at 10 a. m.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for defendants.

Also present: Robert N. Pollard, Jr.

page 2 }

PROCEEDINGS.

The Court: Is Plaintiff ready, gentlemen?

Mr. Robertson: Yes, Your Honor.

The Court: Is Defendant ready?

Mr. Pollard: Yes, sir. Your Honor, at the proper time we would like to have a witness who has been *subpoenad* here this morning recognized until Wednesday the 27th.

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page 5 }

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The Court: Gentlemen, the case you shall try today is one in which the Laburnum Construction Corporation is the Plaintiff, and the United Construction Workers, affiliated with the United Mine Workers of America, District 50, United Mine Workers of America and United Mine Workers of America are the Defendants. Your silence will indicate to the Court that your answer is no to each of the page 6 } questions propounded to you by the Court.

Are you an officer, director, stockholder or employee of any of the parties to this suit?

Are any of the parties in your employ?

Do you have any interest in this case?

Have you formed or expressed an opinion in regard to the issue in this case?

Are you sensible of any bias or prejudice to any of the parties in this lawsuit?

Do you know of any reason why you cannot give the Plaintiff and the Defendants a fair and impartial trial according to the law and the evidence of this case?

I take it, then, from your silence, that you and each of you stands indifferent to the outcome of this litigation. Any questions by counsel?

Mr. Robertson: None by Plaintiff.

Mr. Mullen: None by Defendant.

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page 15 }

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Mr. Fred G. Pollard: All right.

Judge, I think we ought to advise the Court of this before we go any further, and that is that Mr. Owens is an attorney and a member of the legal staff of the United Mine Workers, and anything that he knows about anything in these proceedings has come to his attention through the relationship of attorney-client.

Mr. Robertson: I would like to remind the Court that he has attended a number of these pre-trial conferences under a stipulation of record, and at each one he appeared as a spectator and not as counsel. We will cross that bridge when we come to it.

Mr. Mullen: We have also stated he was a member of the legal department, and has been working with us in page 16 } the case, and has been from the beginning.

Mr. Robertson: And was not counsel in the case.

Mr. Fred G. Pollard: That is right.

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(The jury was sworn by the Clerk.)

Mr. Robertson: I ask that the witnesses be excluded, except within the usual limits. We wish Mr. Bryan to stay in the courtroom.

The Clerk: All witnesses stand, please, and raise your right hand. All parties who are going to testify, stand up and raise your right hand.

Do you and each of you swear the testimony you are about to give in the case before the Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

(The witnesses answered "I do.")

page 18 } The Clerk: Take a seat.

You gentlemen may leave the courtroom and come in as your names are called.

The Court: Except one representative of each party.

Mr. Robertson: In that connection, Your Honor, it is admitted in the pleadings here that District 50 is a part of the United Mine Workers of America, and that the United Construction Workers is a division of District 50. They are all parts of the same thing, and we think they are entitled to one representative.

Mr. Mullen: If Your Honor please, we feel that each defendant is entitled to a representative. We do not have in court anybody else. I mean, Mr. Owens is a member of the legal department of the United Mine Workers and has been working with us in this case all the time. He is not here as a witness on our part, but he is a part of the group of lawyers who have been working in this matter. I think he is a proper one to be summoned.

The Court: The Court rules tentatively that each defend-

ant has the privilege of having a representative present in the trial.

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page 19 } The Court: All right, Mr. Robertson.

Mr. Robertson: If Your Honor please, and gentlemen of the jury. This is a damage suit by the Laburnum Construction Corporation against three labor unions for \$500,000 because all three unions ran Laburnum off a construction job in Breathitt County, Kentucky.

Laburnum Construction Corporation is a Virginia corporation with its home office in Richmond. It was organized in 1937 by members of the family of Mr. John Stewart Bryan and their associates and the president of that corporation today is Alexander Hamilton Bryan, A. Hamilton Bryan. He is also the principal owner of the corporation to an extent and in a degree and manner such that any disaster to that corporation is a disaster to him personally and his own fortunes.

Laburnum Corporation is not a large corporation as companies go in this country today. It is closely held and is a small ownership. It specializes principally in industrial construction, and it has a fine record of performance. It has done a tremendous amount of work for the Government around Norfolk, Portsmouth, the Ducktown Mine Depot, around Washington, at Newport News. It has done a tremendous amount of work for the big companies over at Hopewell, the Dupont Company outside of Richmond, and for other companies in Cleveland, Chicago, in Alabama,

page 20 } West Virginia, and Kentucky.

For the last ten years it has averaged about \$2 million worth of construction a year and, as I said, the company's fortunes are largely dependent upon the integrity and standing and performance of the people who own it and represent it and through whom it acts.

It is thoroughly qualified to do any kind of general construction work.

Now, the three defendants here: One of them is the United Mine Workers of America, of which John L. Lewis is the President. The United Mine Workers of America covers the entire United States and Canada, and therefore it calls itself an international union. The Supreme or final authority in that union is in its international convention, which meets periodically. Between conventions the top authority resides in what is known as the international executive board, which would correspond roughly to a board of directors. One member of that board—and his name is going to keep coming up

and coming up and coming up in this case—is a man named Tom Rainey, who lives at Pikeville, Kentucky. The International Executive Board is made up of the principal officers of the corporation and of the principal officers of various districts. The United Mine Workers of America is divided into districts which comprise certain geographical area for convenience of administration, and there is a director page 21 } of each one of those districts. Then each district is divided up into regions. Then the top officer, as I have said, is John L. Lewis.

The United Mine Workers of America organized coal miners and other people who labor in industries incident to by-products of the coal mining industry, like some of the great chemical manufacturing companies. So much, for the time being. I might say that of these districts, the United Mine Workers has 31 districts, if the charters of any of them haven't been revoked, 31 districts, numbered from 1 to 31, so that they can divide up a geographical area and assign a district to it, like some districts in Pennsylvania, West Virginia, and Kentucky, some in Arkansas, some in Alabama. Then when they come along from 1 to 31 they jump to District 50. They leave a gap in there so that they can form some more districts later on if they want to and still keep up the numerical sequence.

Then when you jump over to District 50, which is a district just as much as any other district and is admittedly a part of the United Mine Workers and subject to the United Mine Workers, the parent organization, and that district includes all of the United States and Canada just the same as the parent company does, and the purpose of District 50 is to organize the unorganized into this District 50. It takes in every industry not taken in by the United Mine page 22 } Workers. It will organize carpenters, bricklayers, barbers, clerk's laundry men, anybody. It covers the whole field of American industry, and it is a part of the United Mine Workers. So when it comes to acting through its District 50, the United Mine Workers is in the field to organize all American industry everywhere, not just coal miners.

District 50 covers the United States and Canada, and it is divided into regions for purposes of convenience and administration, and one of those regions is region 58, which includes Breathitt County, Kentucky, which we are coming to talk about a little bit later.

Back in 1942 there was what is known as the United Construction Workers, which was hooked up with the CIO, and they had a row with the CIO and they pulled out and left the

CIO, and they came over to join up with the United Mine Workers of America. They said, all right, come on in with us and we will make you a division of District 50, because before you got here your function was also to organize the un-organized and to cover all American industry. So come on over and become a division of District 50, and then we will be sitting pretty because we can organize all American industry either through District 50 or through the United Construction Workers, as we see fit.

There you have your three defendants in this suit: The United Mine Workers, the over-all organization, page 23 } District 50, admittedly a district of it, and the United Construction Workers admittedly a division of District 50.

As you can see there, they are all interrelated and interwoven, and I am going to show you as I tell you more of the facts involved in this case that they act through each other and are banned up with each other so you cannot untangle and separate the one from the other.

In Kentucky and West Virginia there is a coal company known as the Island Creek Coal Company and it has a number of associates and affiliates. One of those other companies is the Pond Creek Pocahontas Company, and another one is the Spring Fork Development Company. The Island Creek Coal Company is the third biggest commercial coal company in America. It is the biggest commercial coal company in West Virginia, and I think in Kentucky. It, through its subsidiaries and associates, handles most of the coal that is shipped over the Chesapeake & Ohio Railroad. It is such a tremendous company and its operations and activities are so far-flung that it has constantly engaged in construction work, and that construction work is carried on under a master plan which is developed in phases over a period of time.

During the two-year period from 1947 into 1949 the Laburnum Construction Company had built up a business connection and association with the Island Creek Coal page 24 } Company which was of tremendous value to it.

It was based on a record of business integrity and performance and personal friendship between men such as Mr. Salvati, the President of the Island Creek Coal Company, and Mr. Francis, the Chairman of its Board of Directors.

During that two-year period Laburnum Construction Corporation, with Mr. Bryan as its president, had done a number of contracts for Island Creek and subsidiaries. I think some dozen, maybe a little more, maybe a little less. They had done it to the satisfaction, completely, of Island Creek and its associate companies.

In 1947, on April 15, Laburnum Construction Company entered into a contract with the Richmond Building and Construction Trades Council of the American Federation of Labor providing that Laburnum would employ A. F. of L. labor. In this territory and in these circumstances that was the natural labor affiliation for anybody who was going to work with labor and not buck labor.

Along in October, 1948, after Laburnum had done this good work over a period extending at that time well nigh two years, and I may say it had been profitable to Laburnum, it had averaged them net about at the rate of \$25,000 per year. The work of Island Creek and its other companies was increasing and expanding.

When you come to October, 1948, Island Creek  
page 25 } Coal Company determined to open up a mine in Breathitt County, Kentucky. I am going to describe that to you in a moment. I am going to describe it as a rough, rugged, violent country, so that Breathitt County is known in that section of Kentucky as Bloody Breathitt. I am going to show you some pictures and a sketch of this place in a moment. This place where they wanted to open up this new mine is roughly 100 miles southwest of Huntington, West Virginia. To get to it you go and get off the train at Huntington, you get yourself an automobile, you strike out through the mountains and the bushes southwestwardly from Huntington, you cross the big Sandy River into a place called Louisa, Kentucky. Louisa is a very small town. You go on from Louisa until you get to a town called Paintsville, a town of between three or four thousand people. You go on from Paintsville to Salyersville, the County Seat of Magoffin County. When you get there you have a town of about 12 or 15 hundred people. Then you keep on out into the hills and you pass a place called Royalton, which is two or three hundred people, and when these people got there the road got worse and more difficult as you kept going. Finally, you come to where they were going to open up this new mine, and they call it Evanston, Kentucky. They had to call it something, and I guess that is why they called it Evanston.

At the time they went in there to do the work  
page 26 } that I am going to tell you about in a moment the road was almost unpassable. There was no railroad, there was no telephone, there was no post office, there were no houses, there was nothing. When the Island Creek Coal Company and the Pond Creek Pocahontas Company opened up negotiations with Laburnum Company to open up that mine there the understanding and agreement was: This is a difficult job. It is in rough country. It is very hard to



get your machinery and equipment in there. As a matter of fact, they had to blast out a place to get level enough to make foundations for the tipple. There is not going to be very much profit in it. But as a part of the inducement to do that work and in recognition of past performance, we tell you now that when you have finished this work we are going on and give you additional work, and you can count on practically all of our work in that territory and in West Virginia under our master plan.

So, Laburnum signed up a contract dated October 28, 1948, for the construction of a coal preparation plant at Evanston, Kentucky, which is down at the foot of a mountain where a few creeks come together. Here is the kind of operation it was:

I forgot to state that the C. & O. Railroad was also building a railroad in there to handle the coal from this mine, but that hadn't gotten there.

page 27 } This coal tipple or, as they call it, a coal preparation plant—I guess all of *of* us have seen coal tipples. Of course they get the slate out of the coal, and they have the way now to wash it and steam it and get the dirt out of it and run it around and get it in good shape to ship it to the consumer. This particular operation was a strip mine up on the top of this hill. I will show you a picture of it in a moment. They would strip this coal off up at the top of the mountain, dump it into a conveyor, and the conveyor would carry it down to the tipple where it was processed and loaded into the cars.

The length of that conveyor was about 1,500 feet, and the height of it up in the air about 600 feet.

Laburnum went to work very shortly after the contract of October 28, 1948 was signed, and in order to get its labor and to comply with its agreement that it had made in Richmond, it went to get its labor at the nearest union of the A. F. of L. that asserted jurisdiction in that kind of work, which was the carpenters union at Paintsville, about 45 miles away from the job site.

They got whatever laborers they could get from there. The A. F. of L. sent them in some other men from other locals more distant, and then because they couldn't get others they employed some unorganized labor, too, with the knowledge and consent and to the satisfaction of the A. F. of L.

At that time there was no A. F. of L. labor  
page 28 } union at Salyersville. I know it is difficult to follow me here, but it will clear up, I think, as we go

along. Salyersville is only 25 miles from the job site. Paintsville is 45 miles from the job site. But the nearest place they could get the A. F. of L. labor was at Paintsville because there wasn't any union at that time at Salyersville, although after they started up they did form a local A. F. of L. union at Salyersville on May 9, 1949, but the one at Paintsville had already taken jurisdiction and kept jurisdiction.

As I say, Laburnum moved in and started work in this coal preparation plant shortly after the contract was signed on October 28, 1948. It got its labor from the local A. F. of L. union at Paintsville, and then on December 14, 1948, it signed up a contract with the local union in Paintsville carrying into effect in written form the practice that was already under way to the agreement of everybody.

You remember, these companies had told Mr. Bryan "If you will go in there and do this rough, difficult work at mine site No. 1, we will give you additional work." So, true to his commitment and carrying it out, the time came, I might say, when they were working in there, Laburnum had to build barracks for its men, had to put up a place for them to eat. There was nothing there at all. So the Pond Creek Pocahontas Company determined to build 25 dwellings  
page 29 } there for its men to live in, and pursuant to that over-all plan and over-all agreement it gave the contract to Laburnum to do it at cost plus 5 percent, and the tippie was cost plus 5 per cent.

Laburnum went to work on that job. Then pursuant to the over-all thing, they gave them a contract to build a telephone line 11 miles in to a place called Carver, Kentucky, which was the nearest place they could get a reliable telephone connection. Then they determined that the houses ought to have asbestos shingles on them to make them better and more weather-tight, and they gave Laburnum the contract for that. Then they determined that they would have to build a school there, and they gave Laburnum the contract for that.

Everything was coming along all right, everybody was satisfied, no trouble was anticipated, in there, until July 14, 1949, and at that time the different work at the coal preparation plant had gotten well along toward completion. The 25 houses were about complete. The telephone line had been put in, but the school house had just gotten well under way. They had done very little on that.

Mr. Mullen: We do not object, Your Honor, to the accuracy of the pictures. We reserve, however, the right to object to their offer in evidence.

Mr. Robertson: I have no right to introduce these pictures

now, but I just use them to illustrate, and I am  
page 30 } going to ask the jury as I pass them to look at  
them, which will give you an idea of what that  
country was and what this work was. The first picture I  
hand you is a picture taken from up on top of the mountain  
where they were stripping the coal and laying down along  
the road that comes into that place.

The next picture I shall show you is the conveyor that  
carries the coal from the top of the mountain down to the  
tipple, and you are standing up at the top of the conveyor  
looking down toward the tipple.

The next picture, you are standing down at the tipple look-  
ing up toward the mountaintop.

The next picture shows a truck dumping coal into the con-  
veyor up on the mountaintop to let the coal go down to the  
tipple.

The next picture shows the tipple and the conveyor pretty  
well completed. You are down at the tipple looking up at the  
mountaintop.

These other pictures that I hand you are just showing  
various stages of the work while it was in progress.

(Counsel conferring.)

Mr. Robertson: In order that you gentlemen may visualize  
what is going to be talked about here all through this case,  
we have a sketch here entitled "Coal mine operations, Pond  
Creek Pocahontas Company, Breathitt Count,  
page 31 } Kentucky, scale 1 inch equals one-third of a mile."

Right there in that circle is No. 1 coal prepara-  
tion plant. You will notice over here a road that says it  
comes from Salyersville, coming around and you get in there  
that way.

Here is a creek bottom coming around here, and that is  
where the C&O Railroad was building their road to get the  
coal out of there. It came along the creek bottom, followed  
the creek bottom on around, making this loop. It came up  
here, and they even built a tunnel to go through and go back  
and make a connection, I believe, at Salyersville.

Incidentally, it is very interesting to know that there was  
a race on between Laburnum and the railroad to see whether  
the railroad was going to finish and then they could not start  
to running coal on account of Laburnum being behind time,  
or whether it would be the other way. There was a friendly  
race on there, and Laburnum beat them, I think, by two days.  
The plant wasn't completely finished enough to run coal  
through it by the time the railroad was ready to take it.

Here is your No. 1 preparation plant (indicating). Then you come back over here and see the road comes back over here, and there is the place called Evanston. That is where they built 25 houses, and they also built a store there. They gave Laburnum that proposition.

page 32 } Then there was another *cole* preparation plant down there, and then here is the school house that I told you about. Here is the school house. You come on up here and can cross back over the railroad and get over to the 25 houses and the store, and where they put in the post office. You come on up here and you get to the coal preparation plant, and here are Laburnum's barracks and offices and eating houses.

That is just the general layout of the thing.

In a few moments, gentlemen, it is going to become necessary for you to visualize the school, the tippie and back over to the 25 houses.

Everything was going along all right until July 14, 1949, which was Thursday. On that day, Mr. Bryan was in Richmond and a man named William O. Hart called him on the telephone from Pikesville, Kentucky, not Paintsville, Pikesville, Kentucky. Pikesville is a town of about 10,000 people. It is right near the Virginia line, just over the mountains out in southwest Virginia. This man Tom Raney, the member of the International Executive Board of the United Mine Workers, lives in Pikesville. He has his office there in the Seward Building. He draws a salary of \$1,000 a month for performing those duties. The regional offices of District 50 are also in Pikesville in the same building. And the regional offices of the United Construction Workers are also in Pikesville and in the same building. I think they all

page 33 } use the same post office box. I am not sure of that. I think they all do. Some of them do, at least.

Mr. Bryan got this call, and this man said, "I

page 34 } am William O. Hart, and I am field representative of the United Construction Workers; and my boss is David Hunter, Regional Director, who lives in Pikesville, and I am calling you from Pikesville. His boss is John L. Lewis. We know about this work that you are doing out in Breathitt County, Kentucky. We understand the Pond Creek Pocahtontas Company is intending to give a whole lot more work out there, some 500 houses, stores, school houses, and various things, running into real money and big work.

"I want to tell you, I am not so concerned about what you

are doing now as I am about what you are getting ready to do, and I just want to tell you, you are in United Construction Workers territory, and you are in United Mine Workers territory, and you can't work out here unless you use United Mine Workers and United Construction Workers labor. If you don't do it, we are going to run you off the job and run you out of Kentucky. You can't work in our territory without using our men, and we don't recognize the A.F. of L. in our territory."

He said, "After all, we would be doing to you just what we did to the Beckett Construction Company and the Link-Belt Construction Company over in Wheelwright, Kentucky. You had better come along now and sign up with us and use our men, or get out."

Mr. Bryan told him of this contract he had with page 35 } the A. F. of L., and said, "I am under contract with them. I am not bucking organized labor, but I have this commitment, and I can't do what you say."

He said, "Well, that is it: You either do it or get out."

Mr. Bryan understood from him, he said, "I am acting under orders from David Hunter," and I think he said it at that time. It doesn't make any difference. If he didn't, he said it later. We are going to give you the evidence on it. "I am acting under orders from David Hunter, and also under orders from Tom Rainey."

Mr. Bryan discussed the situation with him, and Bryan understood that Hart wouldn't take any action, and wouldn't try to run them off the job without a further talk with him to see what could be done to try to get out of this jam that he was being put in.

As soon as he hung up the phone, Mr. Bryan telephoned the Superintendent out on the job in Kentucky. He said he didn't know anything about that. Mr. Bryan told him, "Well, watch the situation closely; watch out for developments. If anything happens, let me know."

Then Mr. Bryan called up the top office of the A. F. of L. in Richmond and told them what Hart had said, and asked them to see if they couldn't save him in that situation. page 36 } The evidence will show they couldn't do it.

He also called up the appropriate top man in the A. F. of L. in Washington and told him what happened, and asked if he couldn't save the situation. The evidence will show that they couldn't do it.

So, from Thursday, the 14th of July, until the following Friday, the 22nd of July, Mr. Bryan followed the thing closely by telephone, kept in touch with the superintendent out there, kept in touch with the labor people in Richmond and Washing-

ton, and once during that week went out to the job site on some other matter, and of course made inquiry about this while he was there, and apparently everything was getting along all right, and there was no reason for feeling alarmed.

On Friday, the 22nd of July, he was back in Richmond, and during the day he got a telephone message from his superintendent, Delinger, saying, "I am reliably informed that William O. Hart is coming here next Monday, the 25th, with a number of men sufficient to run us off the job, and he is going to run us off the job. I am just giving you the information."

Mr. Bryan had just come from out there. He had seen no sign of any trouble. He was incredulous. He believed that the superintendent had just gotten jittery. He told him to watch the situation and let him know of any developments. He kept

in touch with him by telephone over that weekend.  
page 37 } Nothing happened over the weekend, and nothing happened during the day Monday the 25th. There was a weekend in there from Friday the 22nd to Monday the 25th.

About 7:30 at night on Monday the 25th, Delinger telephoned him again from out in Kentucky, and he said, "My information is that Hart is coming here tomorrow with 100 or more men, or whatever number of men is necessary to stop our work and run us off the job, and I want you to come out here."

It was too late to catch a train that would put him there in time. Bryan looked up a man named Tony Meli, and got in the company truck and drove all night until they got to Huntington, about 7:00 o'clock or so in the morning.

You see, Bryan had understood from Hart that Hart wouldn't take any drastic action without communicating further with Bryan. So when Bryan got to Huntington, he undertook to telephone Hart at Pikesville, and the information was, "Hart is not here, but you can speak to his boss, David Hunter." You remember, David Hunter is the Regional Director, both of District 50 and of United Construction Workers.

So Bryan got David Hunter on the phone and told him of this telephone conversation he had had with Hart back on the 14th of July, and told him of this last report he had gotten, that Hart and these men were going to be on the job site about noon that day, the 25th, and asked him to get a message to

Hart to hold up and not do the thing until Bryan  
page 38 } could get there and talk to him.

David Hunter said, "Well, I will try to get the message to him."

Just to tell you right now, so that you know what the outcome of that was, both David Hunter and Hart subsequently



admitted to Bryan that Hunter gave him the message, and Hart said, "It is too late; all my plans are made and I can't stop. I am going to it."

Then Bryan started out through the country I have described to you, to the job site. When he got outside of Huntington, his truck broke down. There were several hours delay there in getting transportation, and he didn't get to the job site until 3 o'clock in the afternoon.

When he got there, the men had all quit work. The superintendent was there. A man named Ragen, his field clerk, was there. But the men who were doing the work on the tippie, and down at the school house and over at the 25 dwellings, had left. Everything was still and quiet and at a standstill. That was what reported to Bryan by his men on the job. They said that Hunter and a crowd of men—I mean that Hart and a crowd of men came there and ran them off.

In order to keep the continuity, I am going to tell you what happened there from 12 o'clock on to the time that Bryan got there. He didn't see it, but we are going to have the people here, or their depositions, to tell you in their own  
page 39 } words what happened. I know you want to know  
right now.

On that Monday, the 25th, the men went to work there, I think probably 30-odd altogether, down at the school house and at the bottom of the mountain. The men at the top of the mountain are not involved in this thing at all. They went to work in the regular way, and there was a foreman and about 6 men working down here at the school house. The school house is right on the side of the road, and the woods come down right to it. You can sit in the woods and throw a rock over on the school house.

Along about the time these men were stopping for lunch, here came a crowd of people up the road in automobiles and jeeps, and one thing and another, led by Hart, variously estimated to be anywhere from 50 to 100, a nondescript group of men, some of them drunk, some of them carrying guns, a sufficient number there so that these 6 or 7 men working on that school house didn't have a ghost of a chance to buck them.

They came up there and told them virtually the same thing, Hart and also the men, "You are out here in United Mine Workers territory. You are in United Construction Workers territory. You haven't joined up and you can't work here. You have got to quit right now, or else."

They said also, "You know about Beaver Creek over there. They are rough over there. We will bring whatever  
page 40 } number of men over here is necessary, 100 more,  
300 more, whatever it takes; and if you don't get



off, we will throw you off and do whatever is necessary to put you off."

Some of the men said they were drunk, cursing, calling them everything you could think of. I think one man would run up against another one and show him he had a gun under his shirt. The men were outnumbered, and they quit. They began to gather up their tools and to get ready to leave there.

Then Hart said to this mob that he was leading, "Come on, we will go down to the tipple." Here is the school house down here, and the tipple is up here about a half mile, I think (indicating).

He left enough there at the school house to be sure they had them outnumbered so they couldn't work, and the balance of them started on to the tipple. As they went, these fellows back at the school house could hear shots. When they saw they couldn't work, they said, "Well, we will go on down to the tipple."

When they got down to the tipple, they were pulling the same thing: drunk, cussing, threatening, telling them they were in United Mine Workers and United Construction Workers territory. "You can't work here. You have to join up with us or get off this job."

page 41 } The fellows would show them their cards, and they said, "We don't care anything about that. We don't pay any attention to the A. F. of L. out here. This is our territory."

The threats and reports and the rumors were that they would be lying out in the bushes there in the hills and shoot them. They would get up on top of the tipple and drop something down on them. They would beat them up. They would do whatever was necessary to get them out of there.

There were a few laborers there who had made application to join one of the A. F. of L. unions, and this gang with Hart would just get two or three of them and say, "Come along, now, you are going to sign up."

Some of them just by brute strength and compulsion made them sign, and some of them didn't.

Finally, a lot of them got into the tool house there at the job, and there were some of the leading A. F. of L. officials in there, a man named Subins, I believe; a man named Arnett; a man named Merk Preston. They got in there, and some of these men resented what Hart was saying, and what he was doing. They almost came to a free-for-all shooting match there in the tool house, but the older men there succeeded in quieting them down.

The net result of it was that they were threatened, intimi-

dated, and scared until they left. They pulled the whole thing in about a half hour, I think, down there at the tippie.

When Bryan got in there at 3 o'clock, everything page 42 } was closed down and gone, in the way I have told you.

Also, when Bryan got there—I believe this is the day but, gentlemen of the jury, it is hard for me to get all these facts in sequence—that day when Bryan got there, they had put out a picket, something about a strike, United Mine Workers. Bryan pulled it down and threw it over in the bushes. I think it was that day. If it wasn't that day, it was another day.

While he was on the job there, Hart told these men who he was; that he was working for the United Construction Workers, and he was working under orders from David Hunter, the Regional Director, and he was working under orders from Tom Raney, a member of the International Executive Board of the United Mine Workers of America.

After Bryan got to the coal preparation plant, about 3 o'clock in the afternoon, when everything had quit and his men reported to him what was there, there was no use staying there any longer. So he started over to the 25 dwellings. When he got to the railroad crossing there was an automobile there, and they stopped and they got out to speak to each other. Bryan asked if they knew where he could find Hart, and one of the men said he was Hart. There were three men there with Hart. Two of them were good and stinking drunk. They went

back about as far as from here over to the window, page 43 } and pulled up the windows and locked the automobile and came over, and Bryan got into a talk with Hart. He reminded him of the telephone conversation back there on the 14th of July, when Hart had made these threats. He reminded Hart that he was going to let him hear from him again before he undertook to stop the work.

Hart said, "I didn't understand it that way, that I was under any obligation like that."

He told him about the telephone message he tried to get to him from Charleston that morning. Hart said, "Yes, I got the message from David Hunter. It came too late. I had made all my arrangements; I was acting under instructions, and I had to go ahead."

Bryan said, "Why did you run my men off this job that way in any such highhanded way as this?"

Hart said, "Well, you know so much about it, I don't think I will answer any more of your questions. I don't want to answer your questions." He said, "I will tell you one thing. I bet you \$500 you will not finish this job in Kentucky. You

are in United Mine Workers territory, and you can't work out here and buck the United Mine Workers. Nobody else has ever been able to buck them, and get away with it; and you can't do it, either."

Bryan said, "I won't take your bet, but I resent what you are doing to me, and I am not going to take it lying  
page 44 } down, and I expect to hold you responsible for it."

The interesting point of that is that they were put on notice right then that they might get into this lawsuit. Before we get to the end here, we are going to show you that some reports that Hart made in the routine course of business have mysteriously disappeared.

Then Hart, in the course of this conversation, told him also, he said, "You are not the only one. We have run other people out of our territory out here, and you are just getting what they got. You haven't any right to complain."

Hart, in the course of that conversation, said, "And if we ain't got what it takes to run you out of here, if necessary we will shut down the whole doggone Pond Creek Pocahontas operation of mining coal, if that is necessary, to put you out of here."

There was nothing more he could do there. Bryan went on back to Paintsville. That is where the local union was, through which he hired his carpenters. They had a union meeting that night, of the A. F. of L., and Bryan went to the meeting. Bryan made a talk to the meeting. The purpose of the meeting was for these men to determine whether or not they would go back to the job site the next day and try to work.

Bryan did everything he could to induce them to go, and tried to appeal to their pride and manliness. Somebody spoke up and said, "You don't know anything about it.  
page 45 } You are a city man from Richmond. We have lived out here in these hills, and we know what we are up against. You don't. Do you want to see somebody get killed?"

Finally, somebody spoke up and said to Bryan, "If we go back tomorrow morning and go to work, will you put on carpenters overalls and lead us across the picket line?"

Bryan said—they had him on the spot, and Bryan said, "Yes, I will."

They said, "All right, we will go."

One of the older men there, a fellow named, I believe, Burke Preston—I may fall into some minor inaccuracies here—said,

"Well, if we go over there, everybody ought to pack not less than a 38."

Bryan said he didn't want to do that. He didn't want to go over there and get somebody killed; that they would work it out some other way.

They agreed to meet at Salyersville the next morning, which would be Tuesday the 26th, and go up there together through the woods and the wilds, for self protection. That meeting was the night of the 26th. The union meeting was the night of the 26th.

On Wednesday morning, the 27th, they met at Salyersville as planned, and went out to the job site. Bryan, I believe, went, along with his superintendent, Delinger, and this man Tony Meli.

page 46 } They got to the job site, and there was a picket sign. We have it here and will show it to you and let you take a look at it. It was stuck up in a nail keg, something about "Picket Sign—On Strike," or something. Bryan pulled it down, and we have it here to show it to you. Some of these men who have testified in this case by deposition will say that when Bryan walked over there and pulled that picket sign down, they never expected to see him come back alive. The men were all milling around, the same thing about getting shot from the hill or getting a lump of coal dropped on their heads from the tippie, or the mob coming there.

Finally, Bryan said, "Come on, let's go to work." He got a group of them and went on down to the tippie with them, just a few hundred yards from where they were at the office, and they went to work.

He went back up to the office to get some more, and by the time he got up there, these fellows were so nervous and scared they quit and came on back, too.

Then a fellow arrived on the scene named H. G. Robinson, no kin to me. He was the same kind of field representative as Hart. He was giving them the same talk. The question was, whether they were scared to go back to work or not. They had a man there, Taffl, a man named Jack Parish, and he finally said, "You will just get somebody killed here and I am not going to ask them to do it. I don't think they ought to work."

page 47 } There was a report they would have 100 men there within an hour to stop them if they undertook to work.

They all quit. After they shut down there, Bryan and his superintendent drove back to Salyersville. Bryan's object was to keep the men at work on the job. He went to a State Trooper there in Salyersville, the man on duty in that terri-

tory, named Homer Howard, and tried to get him to go out to the job just for the moral support of police protection. He refused to go. They couldn't get any police protection.

So that night, Wednesday night, Bryan left his superintendent there at Salyersville and said, "You stay here and watch developments, and let me know what happens, and also try to get some men to go back out there tomorrow." Bryan went on back in to Huntington.

The next day, Bryan was called up by one of the International A. F. of L. officers who had heard about all of this trouble and had gone over to Salyersville to see about it, talking about what could be done and what the danger was. This fellow, named Freeman, said, "I am not going to order our men to go over there and be targets. Did you know that your man Delinger's life had been threatened?"

Then Delinger got on the phone and told Bryan that one of the leading businessmen there in Salyersville had come to him  
page 48 } as an emissary from these defendants and told him if he went back on that job site after July 31, which was a Sunday, his life wouldn't be any good. Delinger told Bryan over the phone right then, "I want to be relieved."

Bryan said, "All right, come on back to Richmond."

He came back to Richmond and has never been out there since.

That night, Friday night, the 29th—I think it  
page 49 } was Thursday night, the 28th, Bryan came on back to Richmond. He was in Richmond on Friday. He was attending to other Laburnum Construction Company business. He was consulting with his lawyers. He was over in Hopewell making arrangements for a man named Veltry to go out to the job site and succeed Delinger.

On Saturday, July 30, Bryan was in Louisville and Lexington, Kentucky, trying to get police protection, trying to get some sort of court action that would protect him out there in the bushes so he could go back to work Monday morning, and he couldn't get either.

Sunday Bryan spent the night in Ashland, Kentucky, I believe, and started back to the job site. He got to Paintsville and he ate breakfast with a man named Starr, who was one of his carpenters and one of the leaders in the union, and tried to induce Starr to go back to work and get some men to go back to work. Starr just didn't make any bones about it. He said "I am not going back to work. I am scared to go back to work, and I don't think you are going to get anybody else to go back to work because they are scared to go back to work."

Then Bryan went on over to Salyersville and wanted to go out to the job site. There was a man there, a sort of labor leader in Salyersville named Charlie Williams. He page 50 } went with him. A man named May, I believe, also went with him. They got over to the job site and went down to the school house first, and there was a picket up there, a picket sign, and Bryan pulled it down. We have it here and will show it to you. They went on back up to the office and there was another real fancy colored picket sign, red, white and blue. Bryan pulled it down. We have it and will show it to you. What I have told you about the strike so far, you know just as much about a strike as I do or we do.

While Bryan was with Charlie Williams he offered him a job as assistant to this new superintendent, the man Veltry. Charlie said, "I will take it under consideration." So when they started to leave out there at the job site that Sunday afternoon—I just want to get these things in sequence here and not get myself confused—as they were going on back, finally that night at Salyersville Charlie Williams came to Bryan and said, well, he wouldn't take that job as assistant to Vestry, that it made his wife nervous, that he had so many other things to attend to that he couldn't take that on. It was perfectly obvious that he was scared to take it on.

Then on Monday, August 1, Bryan went back to the job site, and there were some of the men back there that morning. Then it was the same old thing, the same old threats,

the same thing, scared to go to work because of page 51 } what would happen to them. One of the A. F. of L. men named Robert Poe, who was a labor leader there at Salyersville local which had been set up at that time, was circulating around among the men seeing if he could get them to work.

Then Hart showed up again. You see, Hart is the real leader. Hart was talking, saying he was going to run them off, repeating the old threats and everything, and Bryan said to him, "What about this meeting Sunday, yesterday, at Tip-top," a place out in the mountains, "that you all had to try to plan what you are going to do to me?" Hart didn't make any bones about it. He said, "Yes, we had a meeting there yesterday, about 250 men there. We made up what we are going to do. We are going to run you out of here, if necessary, and we will bring a thousand men here if necessary. We will bring whatever here is necessary and whatever roughness is necessary to run you off here."

Then they had run another fellow off at Wheelwright, Kentucky. Bryan learned through him that maybe if he would get in touch with a man named Thomas Davis, who was higher



up than David Hunter, he could get this thing composed. Thomas Davis is an assistant chairman of the organizing committee of District 50. David Hunter worked under him. So Bryan got him on the phone and told him all the trouble and everything, and asked him to call the thing off. Thomas

Davis said, "I can't do it and won't do it. It is  
page 52 } against my instructions. As a matter of fact, I am  
very sympathetic to people in your position, but  
you are just caught between two big unions, and you have to  
take the consequences." He refused to call off either David  
Hunter or Hart. He said, "We don't recognize the A. F. of L.  
out here.

About that time this man Robert Poe had been circulating among the men and reported to Bryan that he couldn't get them to go to work. They were just scared to go to work and wouldn't go to work.

Then the thought occurred to Bryan that maybe he could call a meeting of a lot of the A. F. of L. men at Salyersville the next day, which would be Tuesday, August 2, and see if he could do anything there. He asked Hart, what about it, would he attend a meeting like that. Hart said, "Yes, I will attend a meeting like that, provided you don't try to put your men back to work between now and then." Bryan said, "All right," and arranged a meeting for the next day to be held at Salyersville on Tuesday, August 2.

The Court: Mr. Robertson, let's recess for five minutes.

(Brief recess.)

The Court: All right, Mr. Robertson.

Mr. Robertson: If Your Honor please, I regret that my statement is so long, but I am getting along toward the end of it, and I think it will make it easier to follow the  
page 53 } testimony when it comes in if we have an over-all  
statement of our points.

If Your Honor please, and gentlemen of the jury, they had this meeting at Salyersville on Tuesday, August 2, and it was attended by quite a number of A. F. of L. officials, some of high rank, some of the International officers, some of the local and some just garden variety members. The purpose of it was to see if they could get men back to work. Bryan was there with his superintendent and his field clerk, and Bryan made another talk—I certainly think the facts in this case are going to show that Bryan had the guts—Bryan made another talk to try to get the men to go back to work, and they had a lot of backing and talking and backing and talking. Bryan tried to appeal to their pride. Bryan tried to appeal



to the feeling that they ought not to let a crowd run them off the job that way. He tried to appeal to their self-interest and keep a good job with good pay and regular work. He kept on telling them that nothing was going to happen. Finally, they just got tired of it and they said, "Well, you just don't know what you are talking about. You are a city man from Richmond. We were born and raised in this territory out here and we know doggone well what will happen to us if we go back there. We know what we are talking about and you don't, and that is it, and we are not going back. We are not going out there and get killed."

page 54 } They wouldn't go.

In the meantime, David Hunter hadn't come over. They had asked Thomas Davis to come over and he wouldn't come over. Hart, the leg man, was out there, but they said they didn't want to talk to him. Bryan went out and apologized to him for having to come and then not anybody talking to him. All right, Hart said "Well, that is all right. That doesn't make any difference to me. My position is the same still. Just tell them back in there if it takes a thousand men to keep them off the work, I will have them there. I will have whatever is necessary to keep them off the job."

He said, "What's more—You see here is what made it so difficult too. He said, "What's more, if it is necessary to run you off the job, we will close down the Pond Creek Pocahontas Coal Mining operations, close everything they have got."

There was nothing more they could do. Bryan went on in to Huntington, and the next morning he went to the officials of the Island Creek Coal Company, the Pond Creek Pocahontas Company, and the Spring Fork Development Company, and told them what he was up against, that their men were scared to work and that they had been run off the job, and that was that. They said, "If you can't do the work, there is nothing to do but cancel the contract."

They cancelled it that afternoon, cancelled both page 55 } contracts, and followed it up with a letter. They cancelled it verbally the afternoon of the third, which was Wednesday, and on Thursday they followed it up with two letters canceling it, which we will put in evidence here to show you.

Even then Bryan tried to do something about it. He called up David Hunter over in Pikesville and finally arranged to go over and have a meeting with him. He went over there and had a several hours' conference with him. David Hunter went into quite an explanation of the organization, the United

Mine Workers District 50, the United Construction Workers, and how they were interwoven and worked with each other. In the course of that conversation Bryan reminded David Hunter of the telephone conversation he had had with him there from Huntington on Monday or Tuesday morning, July 26. That was the time that Hunter said, "Yes, I remember that. I got hold of Hart and got the message to Hart, but Hart made all the arrangements to run you off and it was too late and we could not stop." He said, "I will tell you another thing, Hart could bring 6,000 men over there to run you off if necessary."

Then there came up in the course of that conversation, discussing the whole matter somewhat in detail, as I have done with you here this morning, and there came up a discrepancy—Bryan thought Hart had done something on one date, David Hunter thought he had done it on a different date. David

Hunter said "There is no use talking about that, I  
page 56 } can settle that, I can settle that, here are my files."

He made reports on everything he did. He pulled a drawer open and referred to a file he had in the form of reports, and written records of everything that Hart did every day.

Bryan said, again, remembering what he told Hart before, "I am not going to take it lying down. I am not going to take any such treatment as this without a fight. I don't know whether I am going to sue or not, but I tell you right now I am not going to take it and I am going to hold you responsible for it."

Of course David Hunter said "That is up to you."

So he was put on notice that day of what is happening here this day, and in the meantime those files which Bryan saw of his have disappeared.

Then again on May 15, 1950—that was the end of that work there—Bryan thought that Laburnum, if they could help it they didn't want to be run clear out of the West Virginia and Kentucky coal field, and that there might still be an opportunity. He was doing one job out there that hadn't quite been finished. I think that was over in Mingo County, West Virginia. They hadn't run him off that one. So he decided he would have another talk with David Hunter. He went to see him on May 15, 1950. They went over the whole thing, and Bryan said, "I am finishing up that school house. You  
page 57 } have left me alone over there." It was not the school house down at the job site. I am not sure it was a school house, but it was an entirely different job over in West Virginia. He said, "I want to do some more work there if I can. I understand that there is a con-

cern named the R. H. Hamil Company that you ran out of your territory because they weren't United Construction Workers, United Mine Workers. I don't want to go over there and take a job if you are going to run me out. I want to see if you and I can't fix it. I never had any trouble in all the work I have been doing in these years with all these different contracts with Island Creek Coal Company until you came in there and organized the Breathitt County and that territory in there. I don't want to take a job and then be run out of it like Hamil was and like I was over in Breathitt County. What about it?

Hunter told him the same thing over again. He said, "This is United Mine Workers territory, it is United Construction Workers' territory. We don't recognize A. F. of L. over here. We don't care what contract you have got with them or whether you would be breaking that contract if you signed up with us. You can't work out here unless you use our labor and sign up with us. If you try it we are going to run you out again just like we did the last time."

Bryan said to him, "If you and Hart would talk to Tom Raney"—that is the fellow you remember of the page 58 } International Executive Board of the United Mine Workers who lives in Pikesville—"If you will talk to Tom Raney and tell him what is what, and you and Tom Raney tell them to lay off me, that would be the end of my troubles."

He said, "Yes, that might be so, but we are not going to do it. It is against our instructions and we are not going to do it. If you come back here and try to work out there without using our men we are going to run you off the job, and Hart will bring in 6,000 people to run you off if necessary."

Bryan told him again on the 15th day of May, 1950, he wasn't going to take it and that they would hear from him later. They were put on notice then that he wasn't going to take it lying down and now the files have disappeared.

From that day to this Island Creek and its companies have told them, "Don't bid any more. We have the highest regard for you. We have the greatest sympathy for you, but we can't run the risk of the United Mine Workers coming down on us and shutting us up. If you are in any such situation as that you just can't do any more work for us. We don't invite you to bid any more and we tell you in a friendly, nice way don't bid any more on our work."

They haven't had any more work from Island Creek Coal Company from that day to this.

In their defense they deny, of course, that they page 59 } said or did anything wrong. As far as I can tell, it will be an absolute question of veracity between Bryan and some of their men. They deny that Hart, Robinson, David Hunter, and Tom Raney were authorized to do what they did in a way that made their unions responsible. We say we are going to show you, we say in the grounds of defense, that are filed in here, "You admit that Hart and Robinson and David Hunter were the agents of the United Construction Workers and were also the agents of District 50 of the United Mine Workers, but you deny that anybody was the agent of the United Mine Workers of America, and therefore they had nothing to do with it at all." We say, "We are going to show that all three of you are in the same boat from the facts that I have already recited here and other facts, and we are going to introduce photostatic copies of proceedings at your international convention which were afterwards approved by your International Executive Board and published in your official newspaper where you said in effect—not about this particular thing but about anything—organizing the unorganized. 'We are with you boys. You are doing a fine job. Go to town. We are back of you financially, morally and every other way.'"

"you are all parts of the same thing and you are all three liable to us."

Now I come to the end of my opening statement here. I hope you won't think I am always this long. It is page 60 } the longest opening statement I have ever made since I have been practicing law, but I think it has been necessary.

As I said in the first sentence, we are asking for \$500,000 damages, and that would be divided into two items: compensatory damages and punitive damages. Compensatory damages, as the word implies, are damages to compensate or satisfy or make whole and save from money loss Laburnum Company for the wrong that has been done to it.

What is the wrong that has been done to them? As the evidence will show you here? They had a business relationship there that was netting them \$25,000 a year and that would go on indefinitely. If you run it out to 10 years, it is \$250,000. If you run it out to five years, it is \$125,000. They had gone along with these two jobs there and were well toward completion. The actual damages on those jobs amounted to only \$2,000 or \$3,000. They destroyed their business relationship. They destroyed those future earnings. They damaged their

reputation. They have made it so now if they go into the field to compete with anybody to do any kind of construction work in either Eastern Kentucky or West Virginia, they won't even ask them to bid, the third biggest coal company in America, because of what they have done to them. They have run them out. So much for the compensatory damages.

Now, the punitive damages: The theory of page 61 } punitive damages, means just exactly what the words say, to punish somebody. If a person has done something wrong, wilfully, maliciously, wantonly, with malice and insolence and cruelty and threats, the jury may give damages against them as the law says to keep them from doing the same thing in the future, as an admonition that they can't do it and get away with it, and also as an example to others that here is what you may expect if you do these things.

Of course, I don't have to tell you that a \$5 punitive damages doesn't mean anything to the United Construction Workers or District 50 or the United Mine Workers of America. When we have finished this case and have put in the testimony that I have reviewed here, we are going to ask you gentlemen to give us the full amount we are suing for because we think you are going to agree with us that no such insolent and wicked thing can be done here in this country without the perpetrators of it being held responsible for it.

\* \* \* \* \*

page 83 } (The following conference was held in Chambers.)

The Court: First, gentlemen, I have two letters here that were delivered to me today, addressed to the Court, both letters dated January 17, 1951. The first letter:

"Dear Judge Snead:

"I hereby respectfully request the permission of the Court to withdraw whatever appearance, if any, I have made in the above case as counsel for District 50 United Mine Workers of America.

"Respectfully yours,

YELVERTON COWHERD."

Then the second letter asks permission to withdraw his appearance as counsel for United Construction Workers.

I just wanted to call that to the attention of you gentlemen.

Mr. Robertson: Judge, I would like to bring to the attention of the Court this fact: At our last pre-trial conference here when Colonel Harris was not present, the Court requested counsel for the different defendants to state who each one was representing. I understood at that time that the firm of Williams, Mullen, Pollard & Rodgers was representing all of the defendants. I have understood throughout these pre-trial conferences that Colonel Harris was representing all three defendants. I was sitting in the courtroom during the lunch hour and the young lady who is reporting this trial

for the newspaper asked Colonel Harris whom he  
page 84 } was representing in here, and I understood him to say that he was representing United Mine Workers. I couldn't understand whether he said he was or was not representing the other two defendants. It seems to me that there might be some maneuvering there for position about examining witnesses or argument of the case. I don't know whether there is or not, but before you let counsel withdraw I would just like to have it known here who is representing whom, which is what the Court asked at the last pre-trial conference.

If Mr. Mullen's firm is representing all three defendants and Mr. Harris is representing all three defendants, then I personally have no objection to Mr. Cowherd withdrawing, but I don't want to be maneuvered into any position here where it may be argued that they are inadequately represented here by counsel.

The Court: As I recall, you gentlemen stated at the last meeting of counsel that you would inform the Court today as to your position, and I think this is the proper time to receive your statement. Mr. Mullen?

Colonel Harris: May I state, since he mentioned my conversation with the young lady, that I saw Mr. Robertson sitting right there within a few feet of me and I purposely talked loud enough for Mr. Robertson to hear every word that I said. There was no effort to keep him from hearing. On the contrary, I tried to talk loud enough so that he would  
page 85 } hear everything that was said. There was no secret about it.

Mr. Robertson: I didn't say I didn't hear you. I said I couldn't understand what your position was. I still say that.

The Court: That is what we are here for now, to find out what his position is and what the position of all counsel is.

Mr. Mullen: If Your Honor please, our appearance has



been entered for all three. Our plan is that Colonel Harris and ourselves would represent for cross examination purposes United Mine Workers and United Construction Workers, and Mr. Pollard will represent District 50. That is for the purpose of examination and cross examination.

The Court: Let me get that straight, please. You want to examine—

Mr. Mullen: Either Colonel Harris or myself will examine the witnesses or cross-examine witnesses for United Mine Workers and United Construction Workers.

The Court: United Mine Workers. In other words, there would be just one counsel on one witness.

Mr. Mullen: One counsel on one witness, yes. But Mr. Pollard would speak for the District 50 and would want the right to cross-examine for District 50.

Mr. Robertson: If Your Honor please, I think they have a right within their group of counsel as long as there page 86 } is only one lawyer who examines or cross-examines one witness, to proceed as they choose, but I submit that they have not answered the question. Mr. Mullen has stated very frankly here before that his firm represents all three defendants. I asked Mr. Harris to say that and he went in a huddle and he hasn't said it yet and I ask the Court to ask how many defendants is he representing and if so who are they.

Mr. Mullen: I beg your pardon. I just said that we all three had been entered as appearing for all three counsel.

Mr. Robertson: All three counsel?

Mr. Mullen: All three defendants.

Mr. Robertson: Is one of the lawyers for all three defendants?

Mr. Mullen: Entered of record, yes. Each defendant has the right, certainly, to have a spokesman for it. Colonel Harris and I will speak for the United Construction Workers and the United Mine Workers in examining or cross-examining. Mr. Pollard for District 50.

Mr. Robertson: They have a perfect right to do that.

The Court: In other words, if I understand you correctly, just one attorney will take a witness on cross examination, is that right?

Mr. Mullen: Suppose I take a witness on cross examination, Colonel Harris will be barred from cross page 87 } examination, but Fred for District 50 could ask some questions if he wants to.

Mr. Robertson: I don't think that is proper, Your Honor. Counsel are just trying to take a double shot at it and I don't think they have any right to do it.



The Court: I am wondering if you gentlemen could not confer when you have a witness. I would like to be reasonable about that. Let counsel cross-examine the witness. Could you do that? I will be reasonable about the time. If you want to confer on any questions that you want to ask.

Mr. Pollard: Can we recall the witness whenever we want?

Mr. Robertson: I don't think you can make any such bargain as that, do you?

The Court: It all depends on what takes place. I wouldn't like to bind myself one way or the other on that. It is within the discretion of the court.

Mr. Harris: I didn't understand the question.

The Court: Whether or not he could recall a witness. I think that is within the sound discretion of the Court.

Mr. Pollard: Judge, it seems that each defendant is entitled to counsel and each defendant is entitled to cross examination.

Mr. Robertson: And they have lawyers there to page 88 } do it, but they have the same group of lawyers representing all three defendants, and they have not got a right to take two cracks at it any more than I would have that right.

The Court: One moment, Mr. Robertson. If you gentlemen represented different defendants, but as I understand it you all represent the same defendants.

Mr. Pollard: But for purposes of the trial of the case Mr. Mullen and Colonel Harris would represent two of them and I would represent one of them.

Mr. Robertson: That is what they have said and that is what they have entered as counsel on the record.

Mr. Allen: As I recall, you filed an answer here, a joint and several answer, and all of you, as I recall, signed that answer as representing those several defendants.

Mr. Pollard: That is correct, sir.

Mr. Allen: They could assign you to examine or cross-examine the witnesses for District 50, but I don't think you should be permitted to cross-examine a witness put on by District 50 by them, or that you should be permitted to cross-examine a witness that they have cross-examined, whom we put on the stand.

Mr. Pollard: Wouldn't we have had that right if there were separate attorneys representing each one of them?

The Court: Yes.

Mr. Allen: If you had separate and distinct defendants.

Mr. Pollard: We have separate and distinct defendants.

Mr. Allen: With distinct separate issues and rights, for instance, like a man in a three-cornered collision and the plaintiff sues everybody involved in the collision. Their rights are entirely different. They employ separate and distinct counsel. They don't sign the same pleadings and don't represent themselves as representing all the defendants.

The Court: If you gentlemen could confer, I would be very reasonable in that respect as far as time is concerned. I won't pass on the matter definitely at the moment, but I understand your request.

In other words, you would have the right under your theory, to cross-examine further the witness after either Mr. Harris or Mr. Mullen cross-examine for United Construction Workers and the United Mine Workers of America.

Mr. Pollard: That is correct, sir. I would have the right to cross-examine the witnesses put on by the United Construction Workers and the United Mine Workers.

Mr. Robertson: I say, Your Honor, that is contrary to every rule of practice I have ever seen followed in any trial court in Virginia that I have ever been in.

Mr. Mullen: We have a complicated situation here. Three defendants—

page 90 } Mr. Robertson: All with the same group of lawyers.

Mr. Mullen: All right. Three defendants certainly have the right, each individually, to question a witness.

Mr. Robertson: Yes, and they can pick anybody they want and go to it from beginning to end. They can pick any one they want, any witness, and go to the full extent of the law, but they can't be shifting it around now like a kaleidoscope spitting on their hands and taking a fresh hold every time a different one thinks he has a new idea.

The Court: In other words, you want to cross-examine witnesses put on by United Construction Workers and also United Mine Workers as well as the witnesses put on by the Plaintiff.

Mr. Pollard: I don't say that we would, but I should certainly think we are entitled to that right, Your Honor.

Colonel Harris: Judge, it seems to me that if each defendant has a right to be represented and for his lawyer to conduct examinations and cross examinations, the defendant should not be held to forfeit that right because two or three of them agree on the same lawyer. That would require, every time that you had three or four defendants, that they get entirely different lawyers in order not to forfeit their right of cross examination.

Mr. Robertson: Judge, you are familiar with page 91 } the *the* Virginia practice just as much as I am, and you know that what Colonel Harris is suggesting is just not done in the Virginia practice. They go and get a whole group of lawyers, and then they have a right to agree among themselves who is going to take each particular witness, either on cross examination or examination, and he must complete it. He is representing all three when he does that. That is what they have said of record and that is what they have repeated here verbally.

Mr. Allen: If Your Honor please, the right of cross examination is based on hostility, adverseness, and the person who puts the witness on the stand, it is supposed to be his witness and he is supposed to be adverse to the other side. There is no hostility or adverseness as between these defendants, and to permit Mr. Pollard to cross-examine witnesses put on by the United Mine Workers or the United Construction Workers would violate every principle relating to cross examination of witnesses.

Mr. Robertson: It is just to try to maneuver it to there he can ask leading questions, tell the witness what to say and repeat the story. It is perfectly obvious, Your Honor. I am not saying it is with any improper intent, but that is what it amounts to. He would tell the story and then he would ask leading questions. It is too obvious to discons.

page 92 } The Court: I will take that under advisement. We won't reach that this afternoon.

Do you have a witness to put on now?

Mr. Robertson: Yes, sir. I have two or three exhibits. I was going right ahead with Mr. Bryan as my first witness. He will be quite a long witness. We won't finish him this afternoon.

The Court: That will give me time to think this over before cross examination begins.

Mr. Robertson: Do you want to start this afternoon? It has been suggested to me that we might start tomorrow morning.

The Court: I think we ought to get along as fast as we can. Gentlemen, I will grant Mr. Cowherd permission to withdraw as counsel in the case.

page 93 } (The following proceedings were had in open court.)

Mr. Robertson: If Your Honor please, plaintiff offers in evidence copy of Constitution of the International Union,

Mine Workers of America, Washington, D. C., effective November 1, 1948, adopted at Cincinnati, Ohio, October 11, 1948, and ask that it be marked Plaintiff's Exhibit No. 1.

The Court: It will be marked.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 1.)

Mr. Robertson: If Your Honor please, I wish to read Article 20, which appears on page 77, entitled "District 50," as follows:

"Section 1. District 50, United Mine Workers of America, subject to the jurisdiction and regulation of the International Executive Board, is hereby created and set up under authority of the International Union and may adopt by-laws and rules not inconsistent with this Constitution."

Plaintiff offers in evidence copy of Rules of District 50, United Mine Workers of America, March 15, 1949, District 50, United Mine Workers of America, 900—15th Street, N. W., Washington 5, D. C., and asks that it be marked Plaintiff's Exhibit No. 2.

page 94 } (The document referred to was received in evidence as Plaintiff's Exhibit No. 2.)

Mr. Robertson: Plaintiff offers in evidence copy of the Rules of the United Construction Workers, affiliated with United Mine Workers of America, March 15, 1949, 900—15th Street, N. W., Washington 5, D. C., and asks that it be marked Plaintiff's Exhibit No. 3.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 3.)

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ALEXANDER HAMILTON BRYAN,  
was called as a witness on behalf of the Plaintiff, and having  
been previously duly sworn, was examined and testified as  
follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Bryan, is your name Alexander Hamilton Bryan?

A. Yes, sir.

Q. I believe you sign your name A. Hamilton Bryan?

A. That is correct.

Q. Where do you live?

page 95 } A. I live in Richmond.

Q. How old are you?

A. Forty-two.

Q. Have you lived in Richmond all your life?

A. Yes, sir.

Q. What is your present connection with Laburnum Construction Company?

A. I am President of the company.

Q. How long have you been president?

A. Since 1942.

Q. Is that a Virginia corporation?

A. Yes.

Q. Where is its home office?

A. Richmond, Virginia.

Q. Who is the principal owner of the corporation—

Colonel Harris: We object to that as immaterial, if the Court please.

Mr. Robertson: I think it is highly material, Your Honor. It shows what his ownership of the corporation is, and what interest he has in it. It shows his bias. It shows his interest. It shows his motive in everything that is going to follow here as to what he has done.

Colonel Harris: They can't put a witness on and then show his bias, if the Court please.

Mr. Robertson: We certainly can, under our  
page 96 } practice, Your Honor. That is not a matter of  
cross-examination. We can show here just what  
his connection is. Just let them have the whole works, tell  
the story.

The Court: The objection is overruled.

Mr. Robertson: Repeat the question, please, Mr. Reporter.

*Alexander Hamilton Bryan.*

(The pending question was read by the reporter.)

The Witness: I am.

By Mr. Robertson:

Q. What percentage of the entire corporation would you say you own, approximately?

A. I own all the common stock, and some of the preferred stock.

Q. Could you put it in proportion, two-thirds, one-third, I mean of the whole ownership?

A. I could if I had a little time to think about it.

Q. Do you own over half of the whole company?

A. Oh, yes.

Q. When was the company organized?

A. In 1937.

Q. By whom was it organized?

Colonel Harris: We object to that. It is immaterial. There is no question of who organized it, and that wouldn't throw any light on the issues in this case.

The Court: I will sustain the objection.  
page 97 } Mr. Robertson: All right, sir.

By Mr. Robertson:

Q. Is the Laburnum Construction Corporation prepared to do general construction work?

A. Yes, we perform all types of construction work with the exception of road construction and bridges.

Q. Do you specialize in any particular type of construction?

A. Yes, we specialize on industrial work in connection with chemical plants. We have performed a great deal of work for the du Pont Company, the Solvay Process Division of Allied Chemical and Dye Corporation, the General Chemical Division of Allied Chemical and Dye Corporation.

It is not just building construction work, but includes work of almost all crafts and trades, electrical work, piping work, millwright work, carpentry work, heavy rigging work, and work of that nature.

Q. Could you name some of the localities where the Laburnum Construction Company has done work?

Colonel Harris: We object to that as immaterial. The history of Laburnum as to the places where it has worked in times gone by is not material.

*Alexander Hamilton Bryan.*

Mr. Robertson: If Your Honor please, of course I have no right to cut off any objection, but it looks to me page 98 } that this is just the beginning of an attempt to interrupt the telling of this story. Of course, it is perfectly admissible, and any experienced lawyer is bound to know it is admissible. You have to show that this company was qualified to do the work and set itself out to do the work and did do work, in order to demonstrate what damage has been done to it.

The Court: The objection is overruled.

Colonel Harris: We ask an exception.

By Mr. Robertson:

Q. Could you name some of the localities where you have done work?

Colonel Harris: Do we have to repeat our objection, Judge?

The Court: You may make your objection to this line of questions.

Colonel Harris: All right, sir, thank you.

The Witness: We worked in Detroit, Chicago, Pennsylvania, West Virginia, and Kentucky, Mobile, Alabama, down in Georgia, North Carolina, and practically every section of the State of Virginia.

By Mr. Robertson:

Q. What would you say was the approximate aggregate volume of construction work which your Company has done, in dollars, during the last ten years?

page 99 } Mr. Fred G. Pollard: Your Honor, we object to that. We asked, in interrogatories, questions concerning the financial consideration and gross amount of business and profits of the Laburnum Construction Company, and they objected to the answer, and you ruled in their favor, that they did not have to answer it. Since we couldn't get that information on interrogatories and they objected to giving it, they certainly should not be allowed to give it on trial now.

Mr. Robertson: If Your Honor please, of course it is all right with me to argue this in the presence of the jury, and I am going right to the argument. I speak from memory, but I do not understand that any such thing as that happened. It is very vivid in my memory that the Court has not ruled,



*Alexander Hamilton Bryan.*

up to this moment, on the admissibility or inadmissibility of any testimony whatsoever. I understood that they wanted to get the net worth of the Laburnum Company, and the Court refused to do it. We wanted to get the net worth of the United Mine Workers of America, and the Court refused to let us get that. All of that was tentative, subject to a final ruling at the trial.

We are not asking any net worth now. I asked him approximately how much was the aggregate volume of construction work they had done in the last ten years. I want to show whether it is a fly-by-night or a substantial company, because when I get to what they have done to them, I  
page 100 } think that is very material on how much they have hurt them.

If I were doing a \$50 a year business and you ran me out of Kentucky—

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Mr. Bryan, approximately how much aggregate construction work has your company done over the last ten years?

A. Over \$20,000,000 worth of work.

Q. That would be at the rate of \$2,000,000 per year?

A. That would be a fair estimate of the average.

Q. Are you personally responsible for any of the obligations of the company?

Colonel Harris: We object to that, if the Court please.

The Court: What is the purpose of that question?

Mr. Robertson: To show what I stated in my opening, that any disaster to the company is a disaster to him.

The Court: The plaintiff is the Laburnum Construction Company?

Mr. Robertson: That is right, sir.

The Court: I will sustain the objection.

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Q. Now, Mr. Bryan, there has been introduced in here as Plaintiff's Exhibit No. 1, the Constitution of the United Mine

*Alexander Hamilton Bryan.*

Workers of America. I am not going into it in any detail now, but I just want to ask you a few general questions about it.

Have you studied that Constitution?

A. I have made a detailed study of it.

Q. Have you also studied the official publication of the United Mine Workers of America, the newspaper that it puts out?

A. I have been to the Library of the Department of Labor in Washington, and have personally examined every issue of the United Mine Workers Journal, as far back as 1896.

Q. Have you, at my request, made various photostats which will be introduced here later, or had such photostats made?

A. We have had photostats made of portions of approximately 350 periodicals.

Q. Who is the President of the United Mine Workers of America at this time?

A. John L. Lewis.

Q. Is the United Mine Workers of America divided into districts?

A. Yes, the United Mine Workers of America page 102 } has districts numbered consecutively from 1 through 31, with the exception of Districts 24 and 25. Those districts represent employees who are coal miners and who work in and around the mines. Then there is another district known as District 50, which represents employees in practically every line of endeavor except for coal mining.

Q. Do those districts from 1 through 31 have specific geographic limits?

A. Yes, sir.

Q. What, if you know, are the geographical limits of District 50 of the United Mine Workers of America?

A. District 50 has no geographical limitations. It includes the entire United States and Canada.

Q. It includes everything that the United Mine Workers of America includes in territory?

A. That is correct.

Q. Then what classes of laborers are organized within District 50 of the United Mine Workers of America? I mean, what different industries?

A. When District 50 was first organized, on or about September 1, 1936, it represented gas and coke workers. After that, it represented, besides gas and coke workers, chemical workers. At that point it expanded, and it represents at this time all sorts of employees. I have studied copies of the

*Alexander Hamilton Bryan.*

District 50 News, and also the News, which are page 103 } the official publications of District 50. They list a tabulation each two weeks, each time the publication is published, they list a tabulation of the various bargaining agreements made. I have in my file a list of those.

Speaking right now from memory, some of those industries are as follows: bakers, barbers, hospitals, city employees, taxicab drivers, store employees, clerical employees, railroad employees, employees of dairy operators, almost everything you can think of.

Q. Has District 50 got any slogan that you know, under which it acts, to express the purposes of District 50?

A. "Organize the Unorganized."

Q. Who is the Chairman of the Organizing Committee of District 50?

A. A. D. Lewis.

Q. What kin is he to John L. Lewis, if any?

A. Brother.

Q. Who is the Secretary-Treasurer of District 50?

A. Kathryn Lewis.

Q. What kin is she to John L. Lewis, if any?

Mr. Mullen: We object, Your Honor, to what kin any one person in this may be to another. That has no possible bearing on whether a tort was committed down in Breathitt County. Your Honor has already ruled he couldn't ask that question in interrogatories.

Mr. Robertson: Excuse Me. You haven't page 104 } ruled anything finally, Your Honor. It was perfectly definitely understood between the Court and every counsel in the case that anything that has been ruled heretofore was tentative, and the Court was going to rule in the trial as it saw fit.

We have already shown that the Chairman of the Organizing Committee of the national concern is Denny Lewis, John L. Lewis' brother. I am going to ask the next question whether he was appointed or elected.

We are also entitled to know what the connection of Kathryn Lewis is with John L. Lewis, showing how these things are bound up and what the probabilities are or the improbabilities are that they are working in cahoots with each other.

The Court: Gentlemen, suppose you all step out in the hall a few minutes.

(The jury was temporarily excused and left the court room.)

The Court: Do you want to address yourself to that question, Mr. Mullen?

Mr. Mullen: If Your Honor please, the question of kinship of any officer in these organizations to any other officer in them certainly has no bearing on whether that organization has committed a tort. It is asked clearly for the purpose of prejudice. They are trying to raise prejudice page 105 } through John L. Lewis by showing that his brother and his daughter are in there. It is an exceedingly improper question, and intended for an improper purpose.

Mr. Robertson: If Your Honor please, the intention of it is to bring out the facts and to get every advantage that I am legally entitled to from them, for this plaintiff.

They have denied all agency here. When you come along to Hart and David Hunter and Robinson and Thomas Davis, they admit that they are agents of the United Construction Workers, they admit that they are agents of District 50; they deny that there is any connection at all between any of these actions that were done, between the Construction Workers and the United Mine Workers or District 50 and the United Mine workers.

If Your Honor please, what we are trying to do is to show that they are all just interwoven and intertangled and are acting, as I said, in cahoots.

Your Honor doesn't have to isolate yourself from common sense and human experience. Do you mean that if you were John L. Lewis and appointed your brother to District 50 chairmanship, that that would have nothing to do with it? If you were John L. Lewis and you appointed your daughter Secretary and Treasurer, and that they are not elective offices but that they are appointive offices, by you, and one is your brother and one is your daughter, and they are beholden to you for their jobs, and they page 106 } are members of your family, that that has nothing to do with the interrelationship of these three defendants?

Mr. Pollard: Your Honor, Mr. Bryan is not the page 107 } proper person to prove kinship as to the parties under discussion. Anything he knows about it is hearsay.

Mr. Robertson: If Your Honor please, that of course is just quibbling and it is not in accordance with the law.

General reputation and all. He got it out of all those official publications. He does know it.

Mr. Mullen: He is not testifying from his own knowledge.

Mr. Robertson raised the question of agency. If Your Honor please, the question of agency as between these three organizations is to be determined from the constitution and the charter and contracts between them. It is for the Court to construe those. They are written constitutions. They are contracts. The courts have held that they are contracts, and you determine the relationships, agency or nonagency by the construction of those by the courts.

Mr. Robertson: We might just as well go to the mat on that right now. There couldn't be any more unsound statement of law made in a courtroom. Do you mean to tell me that these three union people by drawing up a written thing and acting in accordance with that can limit their agencies and show what their legal consequences are when they employ people and put them out into the field and hold them out as their agents—I don't care what there is written

here. By their acts ye shall know them. To try  
page 108 }

to make a statement to the Court that because they have a paper writing, a self-serving instrument, that that is a measure of their legal liability, that that is the measure of their agency? There is no such law in the land. I say again when we show the interrelationship and the intertangle of this thing and show that the two top officers, one of whom has the chief administrative control is appointed by his brother, John L. Lewis, and draws his pay at the will of John L. Lewis, subject to being overridden if they want to by the International Executive Board and the International Convention, and then his own daughter gets in there and she handles the money as treasurer, and she is appointed by her father and holds her job at his pleasure and draws her pay at his will—that that has nothing to show the interrelationship of these things?

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Mr. Robertson: If Your Honor please, that may be true as between the different unions as between themselves, but not as to third persons. When you show what the situation is, you are setting it up in one way on paper and acting in an entirely different way in practice. We have prepared a

trial brief here, Your Honor, which we thought would be helpful to the Court. I don't know of any more appropriate time than now to pass it up to the Court, and we will be glad to give counsel on the other side a copy of it. I am going to ask Mr. Moore, who has looked up the law on that, to address himself to that proposition here.

Mr. Allen: May I say just a word here, Your Honor. It is shown all through this record that the object of District 50 was to organize the unorganized. As I recall this record shows, the interrogatories and the documentary evidence here, that the only organizing committee that District 50 has is the organizing committee supplied by the international union consisting of a chairman or president, and A. D. Lewis, appointed by John L. Lewis, and the Secretary of the organizing committee is Kathryn Lewis. If you go back to the very beginning, which Mr. Mullen mentioned here this morning, that

District 50 was first organized or the organization of it began on February 8, 1936. At that meeting Mr. John L. Lewis said this, and I am quoting his words. It is in the documentary evidence here:

"If we take in these men—and our Constitution now permits it—there is a question involved as to the conditions under which they shall become part of our organization. I doubt if the organization will want to just issue charters of local unions, giving them the same rights and privileges of men working around a coal mine, participating in elections and conventions and things of that kind. I rather think the course of good judgment would be to keep the United Mine Workers, the heart of it, always like it is, without being subject to being torn down by any subsidiary, collateral organizations. Such expansion as we do in these things might be done on the basis of giving them a semi-autonomous organization—autonomous within their own group, perhaps, with a designated right of the International Union occupying a qualified position in that organization, because of the responsibility of our organization and the necessity of having to comply with our policies. In other words we can work out a reasonable, practical scope and plan of organization. While they might be a part of our organization they would not of necessity be the same part of the organization as the basic membership, because these plans are in every state in the Union.

page 112 } "They would in reality be members of our organization, although functioning in a different classification and in a little different orbit, with semi-autono-

mous rights—I say semi-autonomous, because I think if the United Mine Workers of America is going to be responsible for them, the United Mine Workers of America should have something to do with their policies.

“I think an entirely practicable program could be worked and followed up in a way that it would not involve the expenditure of any substantial sum of money, and perhaps permit what revenue might be received from them to diverted for a time into organizing purposes. We might have to assist them a little in the beginning, but they have developed some very good talent, some bright young men.

“Board Member Livett: In the absence of any detailed plan, after hearing President Lewis enunciate the policy and ideas of the formation of the organization and always having in mind safeguarding of the autonomous rights of the United Mine Workers of America, I move that the resident Executive Officer be empowered to issue charters to these Federal Local Unions in a form and manner prescribed by and agreeable to the Resident Offices.

“The motion was seconded and after a brief discussion was adopted by unanimous vote.”

So it shows there has been no absolutely autonomous union created out of District 50. It shows page 113 } it was part of the Mine Workers. It shows that it had no organizing committee except that supplied by the United Mine Workers of America, and Mr. Lewis appointed the chairman of the organizing committee, who was his brother, and he appointed a secretary-treasurer who was his daughter.

All of that goes to show the closeness of the relationship, the agency, and the fact, as we contend, that they are just arms of the same institution. I think it is admissible.

The Court: I will allow the question. Do you want to say something further, Mr. Harris?

Colonel Harris: On the question about kinship. I want to call Your Honor's attention to what has happened heretofore on that question. That was Question No. 78 in the interrogatories propounded by the Plaintiff to the United Mine Workers of America. Question 78 reads as follows:

“What is the relationship by blood or marriage between John L. Lewis and A. D. Lewis, and what is the relationship by blood or marriage between John L. Lewis and Kathryn Lewis?”

We objected to that question, and in the hearing before



Your Honor on October 12, 1950, according to the transcript of proceedings which I have in my hand, this took place:

page 114 } "Mr. Pollard: 78. "What is the relationship  
by blood or marriage between John L. Lewis and  
A. D. Lewis, and what is the relationship by blood or marriage between John L. Lewis and Kathryn Lewis."

Mr. Mullen: That is plainly for the purpose of prejudicing the jury. It certainly is objectionable, too."

We were arguing our objections, and Mr. Robertson then stated to the court: "I will agree that will come out."

"The Court: All right. Delete 78."

"Colonel Harris: That is withdrawn. No ruling.

"The Court: Yes."

We argued the question of law and admissibility to Your Honor, and we submit that they agreed with us when they withdrew the question that our objection was well taken. Now they come back and ask the same question of this witness from the stand. We think the consistency of counsel and the consistency of the proceedings in this court establish that they are not entitled to ask that question.

Mr. Robertson: If Your Honor please, we might as well clear the ground on this and not have all this quibbling and backing and filling.

Your Honor, I am sure, knows just as well as I do and every counsel in this case knows that time after time after time in these pre-trial conferences when these questions came up the Court said, "I am ruling tentatively when I  
page 115 } make a ruling and I reserve my right and I am  
going to rule as I see proper during the course of  
the trial as the pattern of the trial develops."

That thing shows now that I withdrew the thing because I elected to withdraw it, and it shows that Your Honor made no ruling on that at all, that I voluntarily withdrew it. They cannot fairly come here and say that I bound myself not to do anything. I have learned a whole lot in further study. I don't remember the date of that thing. I have learned a whole lot from further study. Every counsel in this case knows that this case is wide open all through this trial for anybody to make any objections that they see proper to make here or to urge anything that they see proper to urge here. That was understood all the way through. I understand that the Court ruled that the question will be allowed for what it is worth.

The Court: I will hear from Mr. Mullen if he has something to say.

Mr. Mullen: No, I haven't anything further to say, Your Honor. I think the case is perfectly clear on the question of how agency is determined in these union cases. It has been so held not only in intra-union matters, but as to outsiders in cases I have cited there.

The Court: Did any of those cases you cited a moment ago include outsiders suing the union concerning a contract?

Mr. Mullen: I will be glad to give the Court page 116 } a copy of it.

Mr. Robertson: If Your Honor wants to go into that now, Mr. Moore will address it. I don't know that it has anything to do with the question.

The Court: We will pass it by and I think I will pass this question by overnight. I won't allow him to answer the question tonight. But I will take it under advisement.

Mr. Robertson: Until tomorrow, subject to Your Honor's ruling, I am not going to ask him anything about kinship. I have already asked him whether they were appointed or elected and if they were appointed, by whom.

The Court: And just leave out kinship.

Mr. Pollard: Your Honor, this whole line of questions of course is hearsay, and rather than have to bring it up at the end of each question we might as well thresh that out right now. I think we ought to put the other side on notice.

The Court: I think that should be decided and determined, too, since you have raised the point. I think I might just as well let the jury go on home. What do you think about it, gentlemen?

Mr. Pollard: That is the only thing I have to page 117 } say. Everything Mr. Bryan has said so far is hearsay. We haven't objected to it.

The Court: But you are objecting now to further questions.

Mr. Pollard: To anything further along this line of testimony.

The Court: What do you have to say about that, Mr. Robertson? The objection on ground of hearsay?

Mr. Robertson: I say the hearsay rule has nothing to do with it. I am trying, Your Honor, to clear as much ground as we can so we can move along here. I don't want to quibble and make a lot of objections that have no merit in them if I can help it. When I think that something is entitled to go in here and they can put it in, I will not object to it.

What do we have here? Mr. Bryan says that he has studied those three pamphlets in detail. He says that he has made

an exhaustive study of the official publications of these different unions. He says that these questions that he has given are biased on those publications. I say to Your Honor that before the trial is over, we will produce photostats of them and substantiate what Mr. Bryan says, but independently of that when he says that what he has done is based on a study he has made, it is admissible in evidence.

page 118 } Mr. Pollard: Your Honor, he has the documents, and they are the best evidence.

The Court: Where are the documents? Why not offer the documents?

Mr. Robertson: Because they don't come into the trial in an orderly way at this time.

Mr. Pollard: We can't just suit Mr. Robertson's convenience and allow Mr. Bryan to testify as to hearsay.

Mr. Allen: If it please Your Honor, I may say there is an rule of evidence where documents which are voluminous and lengthy, as they are here, interrogatories—I suppose there are several hundred interrogatories with the answers to them, with just dozens of exhibits and copies of these Mine Workers journals, the District 50 news—Your Honor will remember that they were called for in the interrogatories and these gentlemen answered that they had them. All of those documents have been studied and read carefully by Mr. Bryan, and the Courts hold that where documents are voluminous in that sort of way and they are offered in evidence, you understand, and are there for anybody to examine, anybody who has made a study of them and knows what is in them can help the jury along by telling the story in a chronological way as it is told in the complicated and voluminous documentary evidence.

Mr. Greenleaf lays that rule down and Mr. Wig-

page 119 } more lays that rule down. There is no authority to the contrary so far as I know. It is done all the time by accountants, all the time. They are permitted to get on the witness stand even in a criminal case and testify to the substance of what is in documents.

Mr. Pollard: Mr. Allen is speaking of the Shop-book rule which was reviewed by our Supreme Court in the Dupont case which was decided in November, but that applies to records of a corporation where they have been gone over by the CPA and where he has conferred with officials of the company and the documents have been sworn to, that they are the documents of the company. We have no such condition here in the evidence that Mr. Bryan is attempting to bring in.

Mr. Allen: I am not talking about any Shopbook rule, if Your Honor please. I am talking about an entirely different

rule involving putting before the jury the facts that are found in a lot of documentary evidence. How would we ever get to the end of this case to dump before this jury these constitutions and these hundreds and hundreds of interrogatories and hundreds of pieces of documentary evidence? The jury would never be able to read them or understand them. When that is the case, a man who has read them and studied them and condense what is in them and give it to the jury in a short fashion is permitted to do it.

Mr. Mullen: If Your Honor please, that refers page 120 } only to experts. Public accountants, yes. That refers to figures. In the first place, you don't know whether these voluminous papers are admissible. They haven't been passed on. Certainly if they have a bearing on the case, we are not going to let a witness on one side testify what is in them from his point of view. If they are to be introduced, the whole thing has to go before the jury. They have not been introduced here. You would have to take each one and go through it and see whether it is proper evidence to be introduced here. That was all likewise determined in the pre-trial conference. Until that is done and they are put in, I don't think there is any question which can be asked about them.

page 121 } Mr. Robertson: If Your Honor please, I just picked one at random. I can get it out of a hundred. I have here a copy of the United Mine Workers Journal for November 1, 1948. I can bring them on down to date. In every issue, published twice a month, they put down there, "Official Roster of the United Mine Workers of America"; and down here we get to District 50 and there are shown A. D. Lewis, Chairman, Organizing Committee, United Mine Workers of America; Kathryn Lewis, United Mine Workers Building, Washington, D. C., Secretary-Treasurer.

Mr. Bryan is prepared to swear that that is a photostat of an original record which he has himself examined and picked it out and had it photostated. If they want to stick us to the letter of the law rather than the spirit of it, to delay us, we can pull it out and there it is right now. He is prepared to swear to it.

The Court: You are offering that in evidence?

Mr. Robertson: Yes, I will offer it in evidence when the jury comes in.

Mr. Allen: May I say here, too, of course we have a statute which provides for certified copies of documents obtained from public officers like the Department of Labor, but that is only an additional method of proof. It avoids the necessity of calling a witness. When you produce a certified copy,

it just speaks for itself and you don't have to put  
page 122 } anybody on the witness stand even to identify it.

The common law method of proof of a document by compared or examined document is still in force, and it has been distinctly so held in Virginia. We can put Mr. Bryan on the witness stand and hand him as many of these documents as we please, as we think are admissible, and as many as Your Honor will admit, and say, "Mr. Bryan, did you go to the Department of Labor? Did you read this?" "Yes."

"Did you examine it and compare it? Is it an accurate copy of the original?" That is all the law requires.

Mr. Moore: May it please the Court, I would like to say that is found on page 12 of that trial brief, the point Mr. Allen was just making, if Your Honor would care to see the authorities which establish that.

Mr. Robertson: May I make one further statement, Your Honor? I am offering Mr. Bryan as an expert on these constitutions and rules, and as an expert in his knowledge of these official publications. I am prepared right now, if the Court wants to find out whether he is an expert or not, to examine him in detail as to what study he has made of them.

Colonel Harris: We respectfully submit that Mr. Bryan has never been a member of the United Mine Workers, he has never been an administrative officer, he has never worked for the United Mine Workers; and any information that he has  
page 123 } is a conclusion that he reaches. It is purely hear-say and invades the province of the court and jury in this case. If you could take a plaintiff and put him on the stand and say, "We have a long mass of documents," under the law of Virginia, we could make an affidavit and get them. We didn't do it. But we will circumvent all the customary rules of getting documents and put an interested party on the stand to offer his conclusion and thereby take away from the jury and away from the court the construction of the documents. He merely gives, as one general substitute, his opinion as if it were evidence in the case. We submit that it is not admissible and is not the proper way to prove documents or the contents of documents and is not a subject of expert testimony; and if it were, he is not an expert.

Mr. Robertson: If Your Honor please—

The Court: Let us have the jury. Bring in the jury.

(The jury was summoned and returned to the courtroom.)

The Court: Gentlemen of the jury, it seems that I will be conferring with counsel a little longer. It is 25 minutes after 4. I am not going to delay you further. I think I will excuse you for tonight. Be back tomorrow morning at 10 o'clock. In the meantime, don't discuss the case with any outsiders and don't read any newspaper articles about this case during the trial of the case. I don't mean page 124 } don't read the newspapers, but if you see something about it in the newspaper, you had better skip it, because you will get firsthand information right here, and you are bound by the law and the evidence in this case. You are excused until tomorrow morning at 10 o'clock.

(The jury left the courtroom.)

Mr. Robertson: If Your Honor please, of course any expert merely gives his opinion. It is absurd to say you have got to be a member of the union in order to be an expert about the union. You might just as well say that Senator Byrd was no expert on any phase of the law because he is not a lawyer. My suggestion is that Mr. Bryan take the stand and that the Court ask him questions about what study he has made about these constitutions and rules and regulations and what studies he has made about the official publications of these unions; or if the Court prefer, we will do it. Mr. Bryan has spent hours and days and weeks in these studies, and I say without any qualification that he is a highly expert witness on them.

Mr. Mullen: All the study by a man on the evidence in his own case doesn't make him an expert in the case.

Mr. Robertson: That goes to the weight of it, not to the admissibility of it.

Mr. Mullen: Outsiders who are experts can page 125 } testify as experts. Otherwise, it is purely hearsay and purely opinion by one who is not qualified as an expert to make them.

The Court: What would be the objection to offering the documents to substantiate what he is saying?

Mr. Allen: That is exactly what we are going to do, Your Honor. I think these gentlemen have missed the point in the case. Mr. Bryan is not going to testify to anything that is not in these various and sundry hundreds of pages of documents, but the rule of evidence that I am talking about permits him in unfolding his case to testify to things that are in the document which we will put in. If he doesn't do that,



the case will be botched, and you will be stopped here, there, and yonder, and we will never be able to unfold the case.

Talking about an expert, of course there is a variety of opinion as to what an expert is. I don't know whether Mr. Bob Pollard was in the case or not, but I took a farmer in a condemnation case and proved he was an expert in his own case, and we got along all right. All a man has to do is to testify that he has special knowledge of the thing from study or experience or practice, and that makes him an expert. This man had special knowledge of real estate values because he had done some trading in real estate, although he was only a farmer. Judge Pollard let him testify as an expert against government experts who testified in the case, and the jury accepted his opinion as an expert rather than that of the government expert. It just depends on how much  
page 126 } the man knows about the subject as to whether he is an expert or not. -

Colonel Harris: What experience has Mr. Bryan had in organizing unions and administering unions, in drawing contracts between unions? He hasn't had any.

They say that the records are voluminous in the interrogatories. Who made them so? They asked voluminous questions. Then they come into court and say, "Because we ask a lot of questions that will take up a lot of time, we ask you to relax the rules and let us put a plaintiff on to summarize all the documentary evidence in the case."

I have never heard of any such procedure as that. The problem for the court and for the jury could always be removed, and all the trial lawyer would have to do would be to tell his interested client, "Go spend two or three months reading, and then I will put you on and prove your case with one general question to you."

There are restrictions about proving documents. There are predicates that have to be laid. In Virginia, if you want them, you have to make an affidavit about them. We submit that what they are trying to do is a mere device to escape all the rules of evidence, and I challenge them to cite to this Court a single case from Virginia or any other jurisdiction where they put a plaintiff on and allowed the plaintiff to summarize all the documents that he had asked the  
page 127 } defendant to furnish.

Mr. Robertson: If Your Honor please, let's get back down to what we are doing, and don't let us have all these rhetorical challenges like Hart's \$500 bet. We haven't done any such thing. We have said that Bryan has studied these things enough to have expert knowledge on them and



that he is entitled to state generally, here and there, in response to a specific question, what it provides. He can refer you to the section of it if he wants to.

The Witness: May I state, Your Honor, what I have done?

Mr. Robertson: Wait one minute.

The Court: I would like to see some authority on experts on documents. I know you have experts on real estate values.

Mr. Robertson: You have experts who have studied the law and come in here and tell you what the law of Virginia is. Your Honor, I could come up and get on the stand and testify as an expert to the law of Virginia. How good or how poor I was would go to the weight of my testimony. But if I can do that, anybody else can read these things and come along and talk about them for whatever it is worth. That goes to the weight of it.

The specific thing that we are up against right now is that we asked him, "Was Denny Lewis Chairman of page 128 { the Organizing Committee of District 50?" "Yes."

"Is he a brother of John L. Lewis?" "Yes."

"What is your authority for that statement?" "The official publication of the union, which I have studied and read, and which I will hereafter put in evidence."

"Was Denny Lewis appointed or elected?" "He was appointed by John L. Lewis."

"What is your authority for that statement?" "These publications which I have studied and spent weeks on, and which we will put in here later to substantiate what I say."

"Is Kathryn Lewis John L. Lewis' daughter?" "Yes."

"Was she appointed or elected?" "Appointed."

"What is your authority for that?" "The same thing."

Mr. Mullen: The best evidence—

The Court: You are not offering those publications at this time?

Mr. Robertson: No, sir.

Mr. Pollard: Your Honor, we have to make a distinction between these three rules or constitutions that have already been introduced, and these newspapers. What is in the newspapers is hearsay itself. Instead of bringing the original newspaper, they have just photostated something. They say it is the official publication of the union, but they haven't proved that. Everything they talk about is hear-  
page 129 { say.

The Court: I understood it was agreed that if it was identical to the official publication, a photostatic copy

would be accepted, subject to certain rights of the defendants to object to the admission on other grounds.

Colonel Harris: That is right.

The Court: Wasn't that the agreement?

Mr. Mullen: That was the agreement, Your Honor, to object to it. As to the accuracy, it was to be submitted to us in time to examine them. Between 300 and 500 documents were submitted last week. We had two days to go to Congress and all and examine them. It was a physical impossibility. Your Honor had said two weeks before. You told him to get together with me at once. So, we haven't had a chance to check them for accuracy, nor was it pointed out what particular article they wanted to put in evidence.

Mr. Allen: Mr. Mullen, may I ask you a question?

Didn't you agree in the answer to the interrogatories that this District 50 News was the official organ of District 50? Didn't you agree also that the United Mine Workers Journal was the official organ of the United Mine Workers Union? When we called for the District 50 News, certain copies of them, you agreed to furnish them; and when we called for the Mine Workers Journal you said you had all of them except one or two copies that we called for. You page 130 } said you had them.

Mr. Mullen: You have the interrogatories as to what these documents were. You have your questions in the interrogatories. You can use them there. We handed you certain documents that you called for, yes, but with the understanding that Your Honor had not passed on the admissibility.

Mr. Allen: Of course not.

Mr. Mullen: You have the point of the admissibility of all these documents before you get to the point of asking him anything about them.

The Court: You gentlemen consider it overnight and see what you can find. Would it be satisfactory to meet, say, at 9:30 in the morning? We will meet in chambers at 9:30 in the morning and see what we can find. Court will adjourn for the day.

(Whereupon, at 4:35 o'clock p. m., a recess was taken until 9:30 o'clock a. m. the following day.)

Hearing in the above-entitled matter was resumed, pursuant to recess, at 9:45 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on January 23, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for defendants.

Also Present: Robert N. Pollard, Jr.

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### PROCEEDINGS.

(The following proceedings were had in Chambers.)

\* \* \* \* \*

Mr. Pollard: What question would you like to take up first?

The Court: The relationship, since that was mentioned.

Mr. Pollard: The objection there is first that Mr. Bryan isn't qualified to testify as to that.

The Court: I believe there were two points, were there not, the relationship and hearsay?

Mr. Robertson: Yes, sir.

Mr. Pollard: What we are prepared to discuss page 133 } is that they are trying to put in accumulative evidence. Mr. Bryan is trying to testify to a mass of records.

Mr. Mullen: Summarizing their language.

Mr. Robertson: We are not pressing that at this time, Your Honor. What we are saying here now is that it is a matter of common knowledge, the relationship between these two people.

The Court: Let me ask you this: I gather from your statement you are not going into the question of what is in those various records at this time.

Mr. Robertson: No, sir; but what I am going into is just to get the issue clear here on that, that there is a well recognized exception to the hearsay rule, if somebody is kin to somebody, if you say you are your father's son or I say you are your father's son, I don't have to go into a long proof to show whether or not you are of legitimate birth. The same thing with Mr. Pollard or Mr. Mullen or me.

The Court: I might shorten this argument a little bit. I have given that matter some consideration overnight, and

unless I can be shown to the contrary, that is my belief, that it can be stated in evidence.

Mr. Pollard: Judge, it is neither material nor relevant.

The Court: When it comes to the question of agency, the courts give quite wide latitude on what may be page 133-A } introduced into evidence.

Mr. Moore: May I add one thing which shows this very clearly, right on the point, from 2 *Corpus Juris*, speaking of the relationship of the parties. It says: "The relationship of agency can not be inferred from mere relationship or family ties unattended by conditions, acts or conduct clearly implying agency, but proof of certain close relationships such as those of husband and wife, parent and child, brother and sister, is usually entitled to considerable weight when taken in connection with other circumstances as tending to establish the fact of agency."

Agency as to third parties is always a fact to be drawn from the acts and circumstances surrounding the case. We believe clearly the Court is correct in that ruling.

Mr. Pollard: That may be, sir, but so far as Kathryn Lewis is concerned, she is an employee of the International Union, and it does not show any agency between the International Union or any other union with respect to her.

Mr. Robertson: If Your Honor please, she is hired by her father and holds her position and draws her pay subject to his pleasure.

Mr. Pollard: Yes, but she is in the same union that he is.

Mr. Robertson: That doesn't make any difference.

Mr. Pollard: That is the reason it ought not to page 134 } be admissible.

Mr. Bryan: She is a higher official in District 50.

Mr. Mullen: If Your Honor please, the very item that he read there shows that it has no application to this case, nor do the cases that they cite here. These are all cases in which there were no written instruments. In *Bloxom v. Rose*, which they cite, it is impossible to lay down any effective rule whereby it can be determined where agency shall be sufficient to establish agency in any given case. This question must be determined in view of the facts in each particular case. Whatever form of proof is relied on, however, must have a tendency to prove agency and must be sufficient to establish it by a preponderance of the evidence. It may be said in general terms, however, that whatever evidence has a tendency to prove agency is admissible even though it is not full and satisfactory, it is the province of the jury to pass upon it.

That is spoken of where there is no written instrument. In

that case of father and son, the son was in the Army. The father made a lease for property owned by the son. It was denied that he had a right to do it. The claim was agency. They went on to show that he had deposited money to the son's account, collected money, drawn on it, had sold crops, and so forth from the son's property. All of it was a page 135 } case where there was no written instrument.

(Off the record.)

Mr. Mullen: The second case they cite, we have the same thing, a real estate agent claimed that he was an agent to sell the property. There was no written agreement. They therefore undertook to put in evidence showing that he was an agent by outside evidence because there were no written instruments to be construed.

In *Laird against Billing Company*, we have exactly the same thing. There a man travelling for a wholesale concern sold a bill of goods. After he made out the order he wrote on it, "subject to approval at the home office," and the home office didn't approve it. The party to whom he sold took the position that he was an agent to make sales, not merely to solicit orders. They introduced evidence as to his prior dealings.

In one of the cases where there is a written instrument do they permit outside evidence. It must be construed by the Court. That is the case that I read to you yesterday. There are several of those cases. There is another case in which a man was sued because they interfered with his barge line by strikes. He claimed that the local union was an agent of the international union and that in as much as the international union's constitution provided that there shall be page 136 } no strikes without approval of the international

union, that this man on whom there was the question of service, the president of the local union was served the summons and there was an attempt to hold the international union on it. It was held that it could not be done, that they had to construe the constitution, and they ruled whether or not he was an agent, and he was not an agent for that purpose.

Mr. Pollard: Judge, just one other thing here. It might be proper to show the family relationship of Kathryn Lewis and John Lewis if they were trying to prove that she was his agent, but this suit is not against Kathryn Lewis, and it is not against John L. Lewis. It is against the two unions, and their relationship is not relevant in an attempt to establish agency between the unions. It may be relevant to establish personal agency between the individuals.

The Court: What have you got to say about that?

Mr. Moore: Judge, we would like to show you how far off

the point the case cited by counsel for the Defendants yesterday is. The case they relied on chiefly was *Green v. Obergfeil*, 121 Federal (2d) 46. You must keep in mind from the very beginning there is a great difference of what is agency when the matter arises between the principal and the agent. That is when you look at the contract between the two of them, but where a third party is involved the principal and the agent can call each other anything they want to. If their page 137 } acts and circumstances show they were in fact agents, then the jury may find they are agents, even though they specifically say they are not agents.

In the case they cited it was strictly one of these intra-union affairs. It was a suit by the International Union of the United Brewery, Flour, and so forth, workers, against the International Brotherhood of Teamsters. It was a plain jurisdiction dispute, as they call it in the labor law, over who should have jurisdiction over the drivers of brewery trucks. The brewery workers were under the A. F. of L. first, and they complained they had exclusive right to organize these brewery truck drivers. The teamsters union came under the A. F. of L. domination later, and they claimed that the drivers naturally would come under their jurisdiction. The A. F. of L. executive council issued a ruling saying that the drivers should come under the teamsters jurisdiction. The brewery Workers refused to abide by that decision and sought an injunction in the district court of the United States to prevent the A. F. of L. executive council from making such a transfer as this.

It is interesting to note that there were not outside parties involved. The employer of the brewery truck drivers was not involved. It was strictly between these unions.

There the Court of Appeals dissolved the injunction, holding, first, it was "a labor dispute within the meaning of the Norris-LaGuardia Act, and therefore no injunction would lie," and then the Court held that this was an intra-union affair and the court would not interfere with intra-union affairs unless some injustice was shown. The real question was whether the A. F. of L. council acted within the rights of the contracts it had with the brewery union and the teamsters union in making this decision. The court held that if that council had acted within its rights, no party was aggrieved. Therefore they said the only time you can get to the courts is when you show one of these contract provisions has been violated.

That has absolutely nothing to do with where a tort has been committed against a third party. He is claiming that the two parties are agents for each other.

The second case, as Mr. Mullen said, it was simply a question of whether or not service on a member of an international union was service on the union. Of course the courts held that it was not. And that is not involved in this present case.

Mr. Mullen: Service on the local union was page 139 } service on the International Union. That was the question. That was an outside party, a third party.

Mr. Moore: This is what the headnote says, Mr. Mullen:

"Service of process on the president of a local Longshoremen's labor union who was not an officer or representative of the international labor union, was held insufficient to give the court jurisdiction,"—

Mr. Mullen: That is exactly what I said.

Mr. Moore: —"In an action against the international union under the Clayton Antitrust Act."

Mr. Mullen: But it is based on the construction of the Constitution as to the relation between the international union and the local union. The Court also cited the Coronado case, and said that an action could not be brought into court against an international union on service to the local union. That was service on a third party.

Mr. Moore: It is exactly the question of service of process. The court also said the third party had made out a good cause of action. Here we are not involved with service of process. They have all appeared.

Mr. Robertson: It is a novel proposition to me, Judge. We are charging the commission of a tort by Hart, acting within the scope of his authority for all three of these page 140 } defendants, and it is a novel proposition to me that they come along here and say that under the written contract between us, you are out of court. I might just as well come along and say that the private instructions to a motorman not to hurt anybody made the transit company immune when he ran over somebody and killed him. I have never heard that proposition put out yet.

Mr. Mullen: You have introduced these three written instruments, and certainly ever since I have known anything about the law, where you have a written instrument like that, it is up to the court to construe it or put in evidence to change it.

I think Mr. Bryan is not involved in this discussion.

Mr. Allen: That is only a part of evidence. We are going



to introduce not only the written instruments that have been introduced, but certain of the interrogatories which deal with their answers, and we are going to introduce documentary evidence of proceedings at their convention, and statements by the president of the international union contained in the United Mine Workers Journal, all sorts of documentary evidence to show that these men were acting within the scope of their employment.

Certainly when Hart admittedly went there to do what Mr. Mullen says he went there to do, they can't deny page 141 } that he was acting within the scope of his employment then, but if on that mission he exceeded his authority or instructions, and what-not, on the same principle referred to by Mr. Robertson here, they would be liable for his tortious acts. Nobody has ever disputed that.

Mr. Robertson: Haven't they confused the point? Of course, we put in the three booklets, and if the book says one thing and we come before Your Honor and it develops there is a dispute here as to what the meaning of it is, and there is no ambiguity in it, then it is a question for the Court to construe those written instruments.

That is not what we are here for now. We say that this man went out there acting within the scope, we say, of both his actual and ostensible authority.

Mr. Mullen: But he was only an employee of the UCA.

Mr. Robertson: It remains to be seen. We say he is an employee of all three. You have admitted he was the agent of two of them, in your answer signed by all counsel, and I can get it out and read it. You have admitted he was the agent of the United Construction Workers, and you have admitted that he was the agent of District 50. You have denied that he was the agent of the United Mine Workers, and that is what we are going to prove here.

Mr. Allen: When it comes to the question of page 142 } whether he is the agent of the United Mine Workers, you go back to the power of control, not what they actually—

Mr. Robertson: Excuse me once more. When you get him in—I think this is a jury question if we didn't go any further. They have admitted that the United Construction Workers is a part of District 50, and that District 50 is a part of the United Mine Workers. Our contention is that we have a jury question right there; that when they say that these are too smaller parts of the whole, and when this thing can act only through its instrumentalities and members and agencies, then it is a jury question as to whether they were doing it or not.

When we get back to District 50, we have already got it back to the United Mine Workers.

Mr. Moore: The case of agency is a fact. It is always a jury question. The contract may be part of the circumstances, but it certainly is not all of the circumstances.

The Court: Do you have anything else you want to say, Mr. Mullen?

Colonel Harris: I thought Mr. Pollard's statement, Judge, was most important, that it is not a question of proving agency of Kathryn Lewis for John L. Lewis. They are trying to prove the agency of one union for another. It seems to me that that distinction and difference is one that we page 143 } can't overlook.

The Court: What about that point?

Mr. Allen: Let me answer that. This is a complete answer.

Mr. Robertson: Let me say one thing. Judge, these labor unions, all the cases say, while they are not incorporated, they partake of the nature of a corporation. They can act only through their agents and officers and smaller units. We say John L. Lewis, the top man in charge of the whole thing, appointed his own daughter the Secretary and Treasurer of District 50, the biggest district in the whole thing. That is admissible to show the close interrelationship and how they were hooked up together.

The Court: The relationship between District 50 and the United Mine Workers?

Mr. Robertson: That is right.

Mr. Allen: Now, let me finish what I was going to say. I will go back to this premise: It is admitted in this record that District 50 is co-extensive, geographically and jurisdictionally, with the United Mine Workers. It reaches all over the United States exactly as the United Mine Workers does, and up into Canada like the United Mine Worker does.

To connect the United Mine Workers with District 50, in view of that set-up, you go back and inquire who page 144 } has the power of control over District 50. There isn't any question about the fact, from the constitutions and rules and all this other documentary evidence and interrogatories, that the United Mine Workers has the power of control over District 50. It exercises it by the President of the United Mine Workers appointing the Chairman of the Organizing Committee of District 50, namely, A. D. Lewis. It exercises it by the President of the United Mine Workers appointing the Treasurer of District 50, namely, Kathryn Lewis.

The Virginia cases—*Booker v. Musselman*, 152 Va. 293,

*Ideal Steam Laundry v. Williams*, 149 S. E. 479 and 153 Va. 176, and a number of others, *Southern Stevedoring Co. v. Harris*, in 58 S. E. (2d) 302, and *Nolde Bros. v. Chalkley*, 35 S. E. (2d) and 184 Va. 553—they all say it goes back to the power of control. If you have the power to control the party, then you are responsible for that party's actions. It is a jury question here, under all this documentary evidence and anything that may be said, as to whether that agency exists by virtue of the several things we have referred to.

Mr. Mullen: Even if he is correct that he can show the power of control, the power of appointment, that is one thing. You say he appointed the administrative officer or Chairman of the Organizing Committee, whatever you wish to call him, and Kathryn Lewis, and by reason of his appointment showed control; but the fact that she was kin to him had page 145 } nothing to do with it. You are basing it on the power of control by appointment, not by kinship. The kinship has nothing whatever to do with it. It is solely, I think, to prejudice the jury.

Mr. Robertson: May I ask you one question?

Mr. Mullen: Yes.

Mr. Robertson: Would you seriously argue that if you were the president of the United Mine Workers of America, and District 50 comes along and you appoint your own son and daughter in there to hold office at your pleasure, and draw their pay at your will, that that has nothing to do with influencing and showing the relationship?

Mr. Mullen: Not the mere kinship, no. Appointment is the matter you are arguing about, and it is the matter Mr. Allen was arguing about.

The Court: Gentlemen, I overrule the objection, and we will proceed now. Of course, you want to note your exception to the Court's ruling.

There is one other question that I was going to consider, and I have not come to any conclusion on it yet. I failed to get whether Mr. Harris, during the pleadings, had represented himself to be counsel for all of the defendants or one. I do not know whether we went into that yesterday or not. Did we, Mr. Harris?

Colonel Harris: We didn't conclude it. On the page 146 } pleadings, I think that both Mr. Mullen and I represented all three defendants; but in the distribution among ourselves, Mr. Pollard represents District 50 and Mr. Mullen and I represent the International Union and the UCW.

The Court: I will not try to decide that at this time.

*Alexander Hamilton Bryan.*

Mr. Fred G. Pollard: Please let the record show that we except to the Judge's ruling allowing the question to be asked.

Mr. Mullen: Judge, concerning the interrogatories, studying overnight, I ran into a typographical error, and we would like to file amended answers to Question 83 in the Answer of the United Construction Workers to the interrogatories.

Mr. Robertson: Let's see what it is.

Mr. Mullen: And to 85.

The Court: It is a typographical error?

Mr. Fred G. Pollard: Addressed to District 50.

Mr. Mullen: It is plainly a typographical error. I know just how it was made.

Mr. Robertson: I can't get the sense of it from reading it now. I will ask the Court to hold the ruling in abeyance until I can compare them.

The Court: Counsel tells me it was a typographical error, and I will let you make your objection. I am sure page 147 } it was, if Mr. Mullen tells me it was.

I will not pass on it at the moment, and give them an opportunity to pass on it.

Mr. Fred G. Pollard: May we lodge that with you?

The Court: Yes, surely.

(The following proceedings were had in open court.)

Mr. Robertson: Mr. Bryan, will you come back to the stand, please, sir?

Whereupon,

ALEXANDER HAMILTON BRYAN,  
the witness on the stand at the time of recess, resumed the stand and testified further as follows:

#### DIRECT EXAMINATION (continued).

By Mr. Robertson:

Q. Mr. Bryan, toward the conclusion of your testimony yesterday, you testified that John L. Lewis is President of the United Mine Workers of America, and that A. D. Lewis is the Chairman of the Organizing Committee of District 50. Is A. D. Lewis also known as Denny Lewis?

A. That is correct.

Q. What kin is Denny Lewis to John L. Lewis, if you know?

*Alexander Hamilton Bryan.*

A. Denny Lewis is John L. Lewis' brother.

Q. Who is the national highest ranking executive officer of the United Construction Workers, if you know?

A. Denny Lewis.

page 148 } Q. Who is the Secretary-Treasurer of District 50?

A. Kathryn Lewis.

Q. What kin, if any, is Kathryn Lewis to John L. Lewis?

Mr. Fred G. Pollard: Your Honor, we would like to make the objection that you have already ruled on. We would like the record to show that our objection runs to this entire line of testimony.

The Court: Very well.

The Witness: Miss Kathryn Lewis is John L. Lewis' daughter.

By Mr. Robertson:

Q. Was Kathryn Lewis elected to her position, or appointed to it by her father?

A. She was appointed by Mr. John L. Lewis, with the approval of the International Executive Board of the United Mine Workers of America.

Q. Who is the Secretary-Treasurer of the United Construction Workers?

A. Mr. O. B. Allen is the Comptroller of the United Construction Workers.

Q. Do you know whether or not he was appointed by John L. Lewis?

A. He was appointed by Mr. Lewis with the approval of the International Executive Board.

Q. Was Denny Lewis appointed by John L. Lewis as Chairman of the Organizing Committee of District 50, or was he elected to that office?

A. He was appointed by Mr. John L. Lewis, with the approval of the International Executive Board.

Q. Who has the power to discharge him, if you know?

A. Mr. John L. Lewis, as President of the International Union, has the power to suspend or remove from office any appointed employee, subject, however, to the approval of the International Executive Board.

Q. If you know, who has the power to suspend Miss Kathryn Lewis?

A. Mr. John L. Lewis can suspend or remove her from office, again with the approval of the Board.

*Alexander Hamilton Bryan.*

Q. If you know, who has the power to discharge the gentleman that you said was the Comptroller of the United Construction Workers?

A. Mr. John L. Lewis, subject to the approval of the Board.

Q. Mr. Bryan, under date of April 15, 1947, did you execute a contract with the Richmond Building and Construction Trades Council regarding the employment of A. F. of L. labor by Laburnum Construction Corporation?

A. Yes, sir.

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\* \* \* \* \*

By Mr. Robertson:

Q. Is that the executed original of the contract you have mentioned?

A. Yes, sir.

Mr. Robertson: Plaintiff offers this contract in evidence and asks that it be marked Plaintiff's Exhibit No. 4.

(The document referred to was marked Plaintiff's Exhibit No. 4, and received in evidence.)

Mr. Robertson: I don't think it is necessary to read it at this time, Your Honor.

By Mr. Robertson:

Q. Mr. Bryan, in your opening statement here, a contract between Laburnum and the Pond Creek Pocahontas Company, dated October 28, 1948, has been mentioned. I will come to that contract in a moment.

Prior to the execution of that contract, had Laburnum done any construction work for Island Creek Coal Company or any of its associated or subsidiary companies?

page 151 } Mr. Fred G. Pollard: Objection, Your Honor.  
It is immaterial and irrelevant.

Mr. Robertson: If Your Honor please, the Court ruled yesterday that this line of testimony is admissible to show the business relationship that had been built up between Laburnum and these companies, and the value of it.

Mr. Fred G. Pollard: Your Honor made no such ruling yesterday.

*Alexander Hamilton Bryan.*

The Court: The objection is overruled.

Mr. Mullen: Note an exception, please.

Mr. Fred G. Pollard: We note an exception.

By Mr. Robertson:

Q. The question, Mr. Bryan, was whether, prior to October 28, 1948, Laburnum Construction Company had done any construction work for Island Creek Coal Company or any of its associated or affiliated companies.

Mr. Fred G. Pollard: Your Honor, I would like to know what the plaintiff is reading from. I don't think that is proper.

Mr. Robertson: If Your Honor please, there is quite a list of these contracts here, and we are going, in due course, to introduce them, one by one. We can take only one step at a time. At my request, Mr. Bryan has made a memorandum of these contracts in order that he may mention them now, as to which ones they are. Of course, he page 152 } could lay that aside and do it from his memory.

I think in fairness to the witness, he has a right to refer to a record in a matter of this sort, to call the roll of the contracts he had before October 28, 1948.

Mr. Fred G. Pollard: It is not the established practice in Virginia, Your Honor, and the cases say it is not allowed.

Mr. Robertson: I take issue with that.

Mr. Fred G. Pollard: I don't see why Mr. Bryan should be privileged in that respect.

Mr. Robertson: I take issue with that, Your Honor. It is in accord with the established practice in Virginia; and when they get on the stand, if they get into a complicated sequence of events which it is impossible for anybody to hold within their memory, they have the same right Mr. Bryan has, and I have no right to object to it.

Mr. Mullen: If Your Honor please, it is provided in *Paul v. Miller*, 17 Gratt. 187, that a witness cannot read from a memorandum; that he cannot bring a memorandum on the stand and read from it; that he has to testify from memory; that prior to his examination he can refresh his memory, but he cannot read from a memorandum or record of answers to be made, brought on the witness stand. That never has been changed in Virginia. That is the law.

Mr. Robertson: If Your Honor please, my understanding is that the entire matter is within the discretion of the Court as to what is necessary



*Alexander Hamilton Bryan.*

in a given situation to advance the interests of justice and to help in the proper trial of the case. I am going to ask Mr. Allen to address himself to that.

Mr. Allen: If it please Your Honor, Mr. Robertson is exactly right in that statement. The case referred to by Mr. Mullen does not prohibit the practice we are following here. It is true a witness will not be allowed to read the memorandum to the jury, but the universal rule is, not only in Virginia, but Mr. Wigmore lays it down in Volume 2, pages 826-829, and in his New Wigmore Code at pages 37 and 40 of 2 Wigmore, that the witness will be permitted to take any memorandum with him to the witness stand, whether it is made by himself or somebody else. The question is: Does it refresh his recollection? He looks at it. Then he raises his head and testifies. He looks at it and then he testifies. He is testifying from his own recollection, refreshed by the memorandum. That is the universal rule.

It is largely within the discretion of the jury; and if they want to see the memorandum he is using, Mr. Wigmore says they have a right to look at it, and not only that, they have a right to call for the documents he is talking about. We have them, and will produce them. One of the requisites of that rule is that the documents must be in court.

page 154 { The Court: You expect to produce those documents.

Mr. Allen: Yes, sir.

The Court: You have checked and you have gotten that list from the documents.

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. Mullen: An exception noted.

Mr. Pollard: Note an exception.

By Mr. Robertson:

Q. I will ask you, Mr. Bryan, to refresh your memory from the memorandum you have there and then testify from your memory as refreshed.

A. Do you want me to name the contracts?

Q. Yes, sir. I do not at this time want to go into any detail of them. We are going to produce them later, but at this time we just want to mention it and get the broad outline of what the facts of the case are according to our contention.

A. Prior to October 28, 1948, we had been awarded these contracts by Island Creek Coal Company and its associated

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and subsidiary companies. Contract dated September 6, 1947, with the Pigeon Creek Development Company for the construction of 53 prefabricated dwellings at Delbarton, West Virginia. A contract dated June 29, 1948, with the Island Creek Coal Company for the construction of two  
page 155 } store buildings, one at the Brookside Subdivision near Delbarton and the other at the Valley View Subdivision near Logan, West Virginia.

Q. I am going to ask you what was the money value, the money amount of construction in each contract, if you will.

A. In the first contract mentioned for the construction of the 50 prefabricated houses, the money value was \$95,631, including extra work which was awarded. In the case of the two store buildings at the Brookside Subdivision and the Valley View Subdivision the amount of the work was \$66,-486.05.

On September 19, 1948, we were awarded another contract by Island Creek Coal Company for the construction of an appliance warehouse near Holden, West Virginia. The amount of that contract was \$40,898.89.

On October 21, 1948, we were awarded another contract by Island Creek Coal Company for the construction of a building known as Store No. 15 near Holden, West Virginia. The amount of that contract was \$34,313.31.

They were the contracts which were awarded to us prior to October 28, 1948.

Q. Do you know what the total volume of construction was in those contracts?

Mr. Pollard: Excuse me.

page 156 } Mr. Robertson: In dollars.

Mr. Pollard: Your Honor, to save the Court's time we would like to have an understanding with the Plaintiff that when we make an objection it will apply to the entire line of testimony so that we won't have to keep repeating it.

The Court: That is understood.

Mr. Robertson: I understand you are objecting to everything we offer.

The Witness: It would be necessary, Mr. Robertson, to add up those figures. I do not have a sub-total. The total amount of all the work which we performed for Island Creek Coal Company, Pond Creek Pocahontas Company and its subsidiaries amounted to \$651,192.84 over a 28-month period.

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By Mr. Robertson:

Q. That would include all work in Breathitt County, Kentucky?

A. That is correct.

Q. What was the sum total profit to Laburnum on that work?

A. The total net job profit which we made on all of those contracts, 12 or 13, amounted to \$58,714.26. That work was over a period from September 6, 1947, until the end of 1949, 28 months roughly.

Q. At my request, have you made a computation to show what the average profit per year would be on that work?

A. Yes, sir. Based on a total net job profit page 157 } of \$58,714.26 for work performed over a period of 28 months, the average earnings per year would be \$25,163.28.

Q. Mr. Bryan, who is the president of the Island Creek Coal Company?

A. *The* the present time the president is Mr. R. E. Salvati.

Q. Do you know whether or not he is president of the associated and affiliated companies of Island Creek Coal Company?

A. He is also president of Pond Creek Pocahontas Company. Island Creek Coal and Pond Creek Pocahontas Company have a common management.

Q. Do you know whether or not he is president of the Spring Fork Development Company?

A. Spring Fork Development Company is a wholly owned subsidiary of Pond Creek Pocahontas Company. I don't think Mr. Salvati is President of that subsidiary. Somebody else is.

Q. Are you personally acquainted with Mr. Salvati?

A. Yes, sir.

Q. Is he a friend of yours?

A. I regard him as a friend.

Q. Who is the chairman of the board of directors of Island Creek Coal Company?

page 158 } A. Mr. J. D. Francis.

Q. Are you personally acquainted with him?

A. Yes, sir. He was the president of those two companies before Mr. Salvati became president.

Q. Is Mr. Francis a friend of yours?

A. Yes, sir.

Q. Before you entered into this contract of October 28, 1948, what was the relationship between Laburnum and Island

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Creek, Pond Creek, and Spring Fork Development Company? What I am driving at is, had those contracts been worked out in satisfaction and harmony, or had there developed friction and differences?

A. There had never been any difference that I knew anything about. As far as I know, the management of the Pond Creek Pocahontas Company, and the Island Creek Coal Company were pleased and satisfied with the work which we had done. In September, 1948, we received a letter from the Island Creek Coal Company asking us to take charge of their building program in West Virginia in connection with the construction of stores, churches, community buildings, beauty shop, lunch rooms, a great deal of work.

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By Mr. Robertson:

Q. Now, Mr. Bryan, I am coming in a moment to this contract of October 28, 1948. Simultaneously with the execution of that contract did you have any conversations with Mr. Salvati regarding it?

A. Yes, sir.

Q. What was the general import of those conversations?

Mr. Mullen: We object to that as conversation between people who are not parties to this suit.

Mr. Robertson: If Your Honor please, it is the same old matter in a slightly different aspect. One of the vital elements of our case here is that Laburnum had built up an exceedingly valuable business connection and had done work to the satisfaction of Island Creek Coal Company to such extent that when they entered this contract of October 28 and as part of the inducement to undertake that contract on account of the difficulties of the situation, they were promised and given assurance that they would have all the work in this territory and it all goes to the value of the business connection that Laburnum had built up and to the extent to which they had been wronged and damaged if these unions broke it up.

page 160 } Mr. Pollard: Your Honor, in the notice of motion for judgment the Plaintiff makes no allega-

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tion concerning any contracts it may have had with Island Creek Coal Company, and it limits its alleged losses to the state of Kentucky. Any other evidence should not be allowed to be brought in, sir.

Mr. Robertson: If Your Honor please, Mr. Pollard is a god enough lawyer to know that we don't have to allege our evidence and every bit of our evidence in the notice of motion for judgment. They called for an itemized statement of our losses in this \$500,000, and they have got it. We said we were out there to follow this master plan, and that we had it practically within our hands and had the promise and assurance of it, and they broke it up. They have had fair notice, and they have had the particulars of it, you remember, in these interrogatories. They made us itemize it.

Colonel Harris: May I add an objection, if the Court please. As I understand the cases, when a man comes in and wants to get damages on account of any contracts that have been interfered with, it must be with relation to existing contracts. If it is not with relation to existing contracts, the claimed damages are too speculative and remote and contingent, and he does not allege that he had existing contracts. He had an expectation of getting some contracts in the future, but he had not got them. We submit that under page 161 } the decisions that is not a recoverable element of damages, and testimony on what he expected to get is not admissible.

Mr. Robertson: If Your Honor please, this sounds to me like—

The Court: What is your authority?

Mr. Robertson: It is in your memorandum there, the trial memorandum that I passed up yesterday. I am saying it sounds to me like Colonel Harris hasn't read it. The whole point is—I am fully aware it is in the memorandum that Your Honor has the original of, and they had a copy of it overnight. It sounds to me that you haven't read it.

Colonel Harris: You didn't give me one.

Mr. Robertson: I gave your side one and you are all representing the same crowd.

Mr. Mullen: I haven't found it in there, and I read it.

The Court: We will recess for five minutes, gentlemen.

(Brief recess.)

page 162 } (The following proceedings were had in chambers.)

The Court: Suppose you proceed first, Mr. Robertson, because you are familiar with it.

Mr. Robertson: Judge, I turn first to page 14 of the notice of motion for judgment to see whether our allegations are broad enough to cover our proof. I am aware it is quite a long sentence, but I don't think I have to get up to the middle of it.

"—and did actually—"

Mr. Pollard: Where are you starting?

Mr. Robertson: About the middle of page 14 of the notice of motion for judgment, talking about "the said actions were willful, malicious, illegal and unwarranted and intended to and did actually greatly damage and injure the Plaintiff in and about its property and reputation and caused Plaintiff's work in Breathitt County, Kentucky, to be stopped and its said contracts to be cancelled, and further caused Plaintiff to lose other contracts for work which would have resulted in large profits to Plaintiff."

There is no limitation there to Kentucky.

I haven't finished yet and don't interrupt me, Mr. Pollard. I haven't finished.

The Court: We all want to be friends here. It is hard enough without getting upset. Let's all go along as coolly as we can.

Mr. Pollard: Mr. Robertson is the only one page 163 } who is getting upset.

The Court: It is tough on all of us, I can tell you.

Mr. Robertson: "—and caused Plaintiff's work in Breathitt County, Kentucky, to be stopped and its said contracts to be cancelled, and further caused Plaintiff to lose other contracts for work which would have resulted in large profits to Plaintiff."

As I said in my opening statement, this is the third largest commercial coal company in the United States and the largest one in the coal fields of West Virginia. Of course we were out there in the whole field, and there is no such limitation as they argued in the courtroom a moment ago to Your Honor.

If Your Honor please, I am coming to the long memorandum here in a moment. We are all familiar with the rule which prohibits the recovery of speculative and remote and contingent profits, but we are also familiar with the rule, *Townsend v. Atlantic Coast Railroad, Atlantic Realty Company*, which went up from Petersburg, and there is another one, the

Forbes case is one of them, which say that when you have an established builder who has built up a business relationship that has resulted in actual profits over a long enough period of time to show stability of operation and stability of profit and to show that the concern is soundly on its feet and soundly operated so that it has made these profits in the past and it has formed this business connection which so far as we can see would continue into the future, and you can show what the volume of work would be and what normally could be expected to result from it, it is admissible in evidence to show the measure of the loss from any illegal destruction of that business connection.

Now we come to page 13 and 14 of the trial brief. On page 13 there is the heading compensatory damages: "Compensatory or actual damages are by definition the damages in satisfaction of loss or injury sustained as a result of the wrongful acts of the defendants. Compensatory damages include all damages other than punitive damages."

Then quoting from 15 American Jurisprudence: "That the destruction or interruption of a business, or an injury thereto, by the wrongful act of another is a proper element of damage, provided, of course, it is the natural and proximate result of such act, and the injured person is entitled to recover for such damages as to the natural and proximate result of the wrongful act complained of."

"In the present case, the Plaintiff will show loss of profits from both existing and future contracts, damage due to the interruption of Plaintiff's business in Kentucky and damage to Plaintiff's reputation, all directly caused by the tortious acts of the defendants.

"The leading Kentucky case allowing these elements as proper elements of compensatory damage is *American Bridge Co. v. Glenmore Distilleries Company*, 32 Ky. L. R. 873, 107 S. W. 279, (1908). In that case, Glenmore was reconstructing an old distillery plant so as to make it a new and up-to-date plant. The American Bridge Co. contracted to build a larger tower which was an essential part of the new plant. Glenmore was out of business until the new plant was in operation. The defendant bridge company did not complete the tower in the specified time and Glenmore sued for damages for interruption of its business and loss of profits. The lower court awarded Glenmore \$10,950 which judgment the Court of Appeals of Kentucky affirmed and stated at 107 S. W. 284:

"The profits which the court permitted the jury to award



the appellee are not so speculative in their character as to preclude their recovery. The most conservative men invest countless thousands of dollars in the building and operation of distilleries in this state, and profits can as certainly be expected from their operation as from any other class of manufacturies;—’ ”

“The Glenmore case was cited and approved in the later Kentucky case of *Carson-Muse Lumber Company v. Fairbanks, Morse and Co.*

“The Plaintiff in the present case will prove page 166 } these elements of compensatory damage by the degree of proof which is required by Virginia law as set forth in the leading case of *Forbes v. Wyatt*, 143 Va. 802 (1925). The Forbes case was an action by a tenant against his landlord for damages due to the failure of the landlord to deliver certain premises on the day provided in the lease. The plaintiff was in the storage business and claimed damages for estimated profits based on the past results of his business. The court allowed the plaintiff to recover these future profits, stating at page 809.

“As a general rule the expected profits of a commercial business are too uncertain, speculative, and remote to permit a recovery for their loss. However, the loss of profits from the destruction or interruption of an established business may be recovered for if the amount of actual loss is rendered reasonably certain by competent proof; but in all such cases it must be made to appear that the business which is claimed to have been interrupted was an established one, that it had been successfully conducted for such a length of time, and had such a trade established that the profits thereof are reasonably ascertainable.’ ”

I cite those other cases.

“Since the Kentucky law allows damages for the interruption of business and loss of future profits as a matter of substantive right, and the plaintiff can prove such page 167 } damages by evidence which will meet the Virginia procedural requirements, plaintiff will be entitled to these items as elements of compensatory damages.”

I don't know whether Mr. Moore or Mr. Allen want to say any more there or not.

Mr. Allen: If it please Your Honor, the rule about recovering speculative profits is based, first, upon the assumption that

you have suffered no actual damages that can be proved with reasonable certainty. It is based upon the further proposition that the business concern which it is claimed has been damaged was not an established business to the extent that you could expect reasonable profits from it.

Just picking up your digest here, which is not brought up to date, I was trying to run down some cases I had in mind. I find the old case here of *Dangerfield v. Thompson*, and *Peshine v. Shepperson*, in 17 Gratt 742, and they say: "Certain wrongful acts will necessarily injure the business of a person whose rights are violated, and when such is the case the jury may consider the injury to plaintiff's business in assessing damages and in such a case will ascertain the damages, the nature and the extent of the merchant's business, whether profitable or not, are proper subjects of inquiry."

There is a later case right up here in Law and page 168 } Equity Court No. 2 a few years ago in which Mr.

Golden represented the plaintiff, Golden and Golden. The case went to the Court of Appeals and it involved the damages of a mercantile business. A man was operating a grocery store and somebody else did something that violated his rights in connection with the operation of that store. The question was whether he could recover the profits that he would have made if his business had not been interrupted by this defendant. The court went on to say that you could take the man's past experience and the profits that he earned in the past and judge by that, that the jury had a right to have all that put before them to determine whether it was reasonable and proper to allow for profits in the future. There had been an established business and because there had been an established business and the man had shown that that business was interfered with or broken up, therefore he could recover the profits that he could reasonably have made if his business had not been interfered with. I think that is the latest case in Virginia, and they there went into the types of evidence that are admissible, and the door is just wide open.

Mr. Moore: I just want to clear up the conflict of laws point. Damages as a general rule are a matter of substantive law. Our main point is that Kentucky will allow these damages for the interruption of business, loss of page 169 } business, and damage to reputation, but of course the degree of proof is procedural and governed in this case by the law of Virginia. We simply say under the Kentucky law we are entitled to it and I think that Glenmore case shows that. Under the Forbes case, that sets forth what degree of proof you need. We feel that we can satisfy that

degree of proof to make these profits what the case calls reasonably ascertainable.

Colonel Harris: If the Court please, the gentlemen in their argument confuse two things. They have put on evidence up to this time of what the annual profits of the plaintiff were. That is a past fact. We can check on that and see if the figures are correct, and a jury in many jurisdictions is allowed to take the evidence of past profits and from that to calculate what he can reasonably expect to make from that business. That is one thing. That isn't the thing that we are objecting to at this moment. What we are objecting to is that he departs from that and wants to be allowed damages for contracts that he expects to get. He hasn't got any contract. He has a hope and an expectancy.

There have been many cases on the recoverability of profits in lawsuits, and from my jurisdiction there are three separate and distinct cases, and they discuss the right to recover profits on existing contracts. In Kentucky there are page 170 } many cases on profits. For instance, in the case of *Hines v. Denny*, 227 S. W. 567, 190 Kentucky 416, the Court said: "The law regarding the recovery of damages for loss of commissions or future profits, whether resulting from a breach of contract or arising out of a tort, is also well settled in this as in other jurisdictions. In all cases the damages claimed must be such as are directly and proximately caused by the breach or injury and also such as in the contemplation of the parties could reasonably have been anticipated. Moreover, the damages claimed should be capable of being definitely ascertained. Where they are so speculative and dependent upon numerous and changing contingencies that their amount is not susceptible of actual proof, no recovery can be had." Citing 13 Sykes 36: "As already intimated, the evidence in this case as to the loss of commissions by appellee is based upon too many contingencies, is too general and indefinite to admit of a proximately accurate ascertainment of the character or amount of the damages claimed, and was wholly insufficient to show that they were or are of such a character as could have been contemplated by the parties, for it was not made to appear that the servant of the railroad company who received the appellee's baggage or any who had it in charge or by whom it was lost knew that it contained samples or the use that the appellee intended to make of it. We have frequently held that damages page 171 } of the character here claimed are peculiarly conjectural and speculative, and hence not recoverable."

Then in another case, *Weick v. Dougherty*, 139 Kentucky 528, 90 S. W. 966, 28 Kentucky Law Reports 930, 3 LRA New Series 348.

Mr. Allen: What is the last citation?

Colonel Harris: 3 LRA New Series 348. In this case the court said: "The instructions given by the trial judge correctly advised the jury as to the law of the case, except that one of them authorized the allowance to appellee of damages for the loss of profits in his business as a huckster alleged to have been caused by the negligence of appellant in permitting the destruction of his wagon. The jury should not have been allowed to consider such loss of profits in estimating appellee's damages, nor should he have been allowed to introduce evidence upon that question. This is not the character of case in which damages can be recovered for loss of profits. In an action to recover damages for injury to property by reason of the negligence of the defendant the plaintiff can not recover anything by reason of his inability to instantly supply himself with other property in lieu of that injured or destroyed. Such damages are too remote to be the subject of judicial ascertainment."

He wants to show the analogy of that case. He wants to show that he has lost profits because he could page 172 { have obtained contracts and to show what they were, but he didn't have a contract. Whether he gets the contract depends on too many contingencies.

In the first place, the company may call for bids. He may not be the low bidder. In the second place, the company may find that it is losing money on its operation and may decide to cease that operation. In the third place, something like a war may come along and make a shortage of materials, and the company doesn't give him a contract because they see they are going to have difficulty in carrying out their program.

There is a difference, clearly, it seems to me, between speculating on what a man might get by way of specific contracts and allowing a recovery on contracts which he actually had. No man ever knows until the contract is made whether somebody else is going to hire him.

In another Kentucky case there was a jockey who sued. That is the case of *Tucker v. Horn*, 103 S. W. 717, 31 Kentucky Law Report 806. In that case the Court said:

"We think the court erred in authorizing the jury to find for the plaintiff anything on the score of what he might have made by riding outside mounts. In the first place, it is neither alleged in the pleading nor established by the evidence, except

in his own opinion, that Earl Horn would have been employed by outside parties to ride for them. Secondly, page 173 { such damages—"That is the question of whether he would have been employed. "Secondly, such damages are entirely too remote and speculative in their nature to be susceptible of being legally established with the certainty to authorize the recovery, and a jury are not permitted merely to guess away the defendant's property. Prospective profits are not ordinarily recoverable in actions for breach of contract. It is difficult to lay down any general rule on this subject, and usually the cases are permitted to stand or fall upon the particular facts of each. Sometimes the question becomes so close as to make it one of great difficulty to say whether or not any given item of damages for breach of a contract is or is not too remote and speculative to authorize a recovery.

"But in this case it seems to us entirely unreasonable that a jury should be allowed to say at haphazard—" And that is what it would be in this case, a jury allowed to say at haphazard—"who might or might not employ the infant plaintiff to ride their horses during the contract period. Undoubtedly it is true that employees who have no jockey entering a given race will sometimes be engaged by other owners who are in need of riders, but that this will happen is entirely problematical."

That he would get the contracts is entirely problematical.

"In the case of *Koch v. Godshaw*, 12 Bush 318, page 174 { it was held that the prospective profits of conducting the business of a bakery were too remote and speculative to be recoverable as damages for breach of the sale of a bakery establishment. The case at bar comes within the principle thus announced. The outside mounts were merely collateral to the main contract sued on, and it must be uncertain whether or not Earl Horn would ever have been employed to ride an outside mount, his chance of such engagement is entirely too remote and speculative to constitute the basis of recovery for the breach of a main contract."

There was another Kentucky case of *Turpin v. Jones*, 227 S. W. 465, 189 Kentucky 635, in which the court held that a sharecropper that could not recover of the landlord by way of damages "conjectural profits they might realize from the cultivation of the land."

I mean the same conclusion is reached on a similar state

of facts in the case of *Smith v. Phillips*, 29 S. W. 358, 16 Kentucky Law Reports 615. And in the case of *Owens v. Durham*, 5 Dana 536.

In the more recent case of the *Kentucky Utilities Co. v. Warren Ellison Cafe*, 231 Kentucky 558, the court discussed loss of profits as damages and said:

"It is true that lost profits are a proper element of damage only when such loss is the direct and necessary result of the defendant's acts or in cases involving a breach of contract where the loss of profits may reasonably be supposed to have been within the contemplation of the parties when the contract was made as the probable result of its violation. It is always necessary, however, before there can be a recovery to show profits with reasonable degree of uncertainty."

You can't get a reasonable degree of uncertainty, if the Court please, out of the initial uncertainty whether he would ever have the contract.

The Court: Do you have any Virginia authorities there, Mr. Harris?

Colonel Harris: I briefed this from the standpoint of Kentucky because the Kentucky law as to the recoverability, the damages recoverable, governs in this case. The Virginia law is not the law to be applied. We stipulated, and it was also the doctrine of conflict of laws—we stipulated in this room that the Kentucky law governs the substantive rights of the parties, so a Virginia decision would not be the controlling decision on the recoverability of profits as an element of damages, if the Court please. The Kentucky law, it seems to me, would not under any circumstances allow the jury to guess at haphazard, allow entirely speculative recoveries to be made. For instance, there was a federal case of *E. H. Taylor, Jr. and Sons v. Julius Levin*, 274 Fed. 275. That went up from the Western District of Kentucky. The page 176 } court said:

"It is true that value of this whiskey did thereafter continue to increase, and that Sherwood, who bought it from Taylor, and Taylor who thereafter repurchased part of it from Sherwood, made large profits, but this can not affect the measure of damages. If profits are inherently too speculative for recovery, the fact that they happened to have materialized before the trial does not change the rule."

In that case the profits at the beginning and at the breach,

at the wrong, were inherently speculative. By the time they got to trial you could look back on the past and see what those profits actually would have been. But the point of view that the law took was, what was the nature of them at the time the wrong was done, and if it was speculative and contingent and remote and he didn't have existing contracts, if the Court please, we are violating the fundamental rules of substantive law as to the recoverable damages. We submit that the plaintiff can not show his expectations of getting contracts.

Mr. Pollard: Your Honor, I have a Virginia case, and I think it is certainly the latest case on the subject and probably the leading case.

The Court: What is it, please?

Mr. Pollard: It is the case of *E. I. Dupont de Nemours and Company* against *Universal Molded Products Corporation*, 191 Va. 525, decided November 27, 1950. It goes into an extensive discussion of the law, and the case is 56 pages long. What happened in this case was that the *Universal Mold Products* was building radio cabinets, and Dupont sent its engineers down and recommended a specialized formula with a specialized procedure of application to the cabinets for finishing. Without notice to the company, Dupont changed the formula because it was unable to get some of the ingredients of the original formula. The evidence was clear that it caused some several thousand cabinets to peel or blister and they were all rejected by the radio manufacturers. During this period of business interruption caused by Dupont's breach of warranty the company lost \$100,000 a month, and in the lower court there was the recovery of over \$500,000 for *Universal Molded Products*. The Court of Appeals reversed the case.

Mr. Robertson: I have talked that case over with Coleman Andrews. He was one of the witnesses in it.

Mr. Pollard: He was one of the witnesses for *Universal Molded Products*, I believe, Mr. Robertson.

"While Dupont might have seen some damage would result from the supply of unsuitable paint materials, it is difficult to understand how it could have reasonably foreseen the paint finishing failures on the occasions mentioned would probably cause an interruption of normal operation of the *Universal plant* for 6½ months, and the consequent loss of approximately \$100,000 per month."



The court says:

"Under the peculiar facts and circumstances in this case it is our view that the only practical way of ascertaining with reasonable certainty the extent of the liability of the defendant is to measure it by the amount of the reasonable cost of re-finishing all cabinets shown to have been defective because of the failure of the paint finishing materials furnished by Dupont."

So all of the damages that the Supreme Court says should have been allowed was the actual cost of refinishing the cabinets and the damages for loss of business were so speculative and remote and could not be determined that they were all thrown out. The only thing that the company was entitled to was the actual cost of refinishing, which is about one-tenth of what was allowed. My recollection is that it was fifty-some thousand dollars.

Mr. Moore: That was a suit on a contract, page 179 } wasn't it?

Mr. Robertson: Do you have anything to say, Mr. Mullen?

Mr. Fred G. Pollard: The Court never made it clear. It said it was a suit for a breach of warranty. It sounds like a contract, but it could be either one. It never said whether it was a tort or a contract.

The Court: Mr. Mullen?

Mr. Mullen: Your Honor, the objection that brought on this argument was to the question that was asked as to whether the plaintiff had had any conversation with Mr. Salvati. I objected to it on the ground that conversations with third parties were not admissible in evidence. That is the law.

I was also struck by the way they laid their damages in this Notice of Motion. They said, "Willful, malicious, illegal and unwarranted, and tended to and did actually greatly damage and injure the plaintiff in and about its property, and reputation, and caused plaintiff's work in Breathitt County, Kentucky, to be stopped and said contract to be canceled, and further, caused plaintiff to lose other contracts for work which would have resulted in large profit to the plaintiff."

You can't lose what you don't have. We did page 180 } not have any contracts for other work. They expected and hoped to get contracts for other work. Their Notice of Motion isn't sufficient to cover expectations. It specifically states that it caused them to lose contracts; and you can't lose a contract unless you have a contract.

They had no contract in this. They were hopeful of it. There were a thousand different things that could interrupt and prevent them from getting it.

I think maybe it will be shown that the work was done a great deal cheaper than they thought they could do it. So I don't think even their Notice of Motion is sufficient. I don't think that they have a right to show by conversation with third parties, alleged promises to give contracts.

I was struck by the Law Governing Labor Disputes and Collective Bargaining, by Teller, who has this to say bearing on what has been said here:

"In tort actions generally malice is a ground for imposing exemplary damages. In cases involving alleged malicious prosecution, malicious abuse of process, and malicious actions for the enforcement of civil rights, malice means any motive other than that of a desire to bring the accused to justice. Malice under such circumstances does not mean ill will; the existence of an ulterior motive is sufficient to show

malice, as where a party utilizes the machinery of  
page 181 } the criminal law for the purpose of coercing the  
payment of a debt or the delivery of property.

Malice is also quite frequently employed in connection with assault, battery, and false imprisonment, yet in none of these torts does malice play any part in the ultimate facts necessary to establish a cause of action. In connection with third party interference with contractual relationships malice has been said to mean 'the intention to appropriate to one's self the promised advantages which another has secured by contract'."

Under that theory, the malice would have to be shown through showing that Hart intended to appropriate to himself the benefit of the contract that they had with Pond Creek and also the other cases hold that he must have intended to injure the plaintiff.

There was no desire to injure the plaintiff, but a desire to keep their jobs there. All these men who came there with him had jobs, and they were not trying to injure the plaintiff and were not trying to take jobs away from the workmen there.

The Notice of Motion itself is insufficient.

The Court: What about the conversation with third parties?

Mr. Robertson: Will you hear me through on this thing? I will be as short as I can, Judge.

I am not going to take the time of the Court to reply to

any such thing that Hart is not responsible for  
page 182 } his actions unless he appropriated some gain to  
himself.

I don't know why we are talking about malice here at this point. I don't know that there is anything about collective bargaining in this case at this time.

In the Bristol case—I haven't read the cases recently. I have had quite a discussion of it with Coleman Andrews, one of the experts in the case, and I understand that in that case they were claiming the loss of all profits from the business over a period of time. We are not doing that. We don't say that we are claiming here anything from operations anywhere in the United States with any other people except Island Creek and its subsidiaries, and we show definite contracts there.

Your Honor asked Mr. Harris a fair question, and that was: did he have a Virginia decision to sustain his position? And he never answered it, and he never cited one. Mr. Pollard came up with the Bristol case, which I have shown you is different from this case.

About recovery of future damages, it doesn't make any difference; we do not have to get into any difficulty here about whether the Kentucky law or the Virginia law controls in that phase of the case, because the rule is the same in both States.

As is said in all these cases which have been read here, it is a question of reasonableness, and it is a  
page 183 } question of the facts of each individual case. We are not engaged here in a horse race. I think he used a very unfortunate illustration, because if you get into a war, they are going to need all the coal they can dig from under the ground, and get to industry.

Everything they said goes to the weight of the evidence rather than to the admissibility of it.

If Your Honor please, one of the elements, the very heart of our case, is that they, through their unlawful acts, broke up our connection with the Island Creek Coal Company and its companies, and destroyed that business relationship; and under these decisions that we have here, and that Mr. Allen has referred to, anything that throws light on that is admissible.

What do we have here? We can only prove one phase at a time, of course. Now, they are getting ready to execute the contract of October 28. They are having discussions of that contract, both before and after it is executed; and the purport of those discussions is both before and after, everything that was said before was repeated after, but it is a part of the

consideration of the contract, just like you say "For \$10 and other good and valuable consideration," or whether you say it or not, if there is another consideration you are entitled to show it.

The other consideration here, as I have already page 184 } indicated in my opening statement, that Salvati said to Bryan, "I realize all the difficulties of this coal preparation plant in Breathitt County, and as an inducement and as a part of the consideration for your undertaking that, here is what you are going to get in the future." So Bryan went ahead and executed the contract; and in the future it came right along just like Salvati had said it was going to come along. They gave him the contract for the 25 houses; they gave him the contract to put the asbestos shingles on. It has been kind of thrown out here in the opening statement that it was a shoddy job and therefore they had to put shingles on it. It was built the way the contract called for. There is no reflection on Laburnum on that. They gave them the school house. I think they gave them a store building. My memory is not clear on that at the moment. They gave them some repairs to another coal plant, or an addition to it, or for the laying of the foundation of another one.

We have here—they have already seen it—Salvati's deposition in the case.

In the orderly presentation of our case, we propose now to show incident, surrounding, attendant to the execution of the contract of October 28, or before and simultaneous and afterwards, as additional consideration to it, he said, "If you will do this rough and difficult work out there, I will give you these other works."

page 185 } When Bryan finishes, we are going to put Salvati on the stand, or his deposition on the stand, where Salvati under oath said, "Here was our master plan that we intended to carry out. Here was over \$600,000 worth of work already authorized that I wanted to give you and have you do it."

Then we are going to come along and show that contract after contract after contract, they were asked to bid on by Island Creek, they did bid on it for Island Creek, and they did not get the jobs. Island Creek told them frankly, "The reason we can't give them to you, we are afraid we will get in bad with the United Mine Workers ourselves, and they will shut us down. Therefore, don't bid any more, because that is the situation we are in, and there is no use in your going to all that work when we cannot give you the contracts."

As I said here in the beginning, each case stands on its own facts, and it is a matter largely within the discretion of the

Court as to whether or not the expected contracts are reasonable. I didn't count the contracts he named, some 8 or 10 of them. They had been done highly satisfactorily. They had resulted in profits of \$25,000 a year in a period of 28 months. Here were additional contracts promised to them. They were invited to bid on them. They did bid on them. The testimony is perfectly overwhelming.

page 186 } I don't know what they are going to come in with. The testimony from our side is perfectly overwhelming that the reason they didn't get them was because they had run them out of there, and because they were afraid that they would pull down a strike of the United Mine Workers on the Island Creek Coal, and the fat would be in the fire for them. There is no question of collective bargaining anywhere in this case.

I am going to ask Mr. Allen and Mr. Moore to go on from there.

The Court: Who closes this argument?

Mr. Robertson: We led it, so I would think we closed it.

Colonel Harris: You asked a question of me a while ago that I want a chance to answer.

The Court: You go ahead, and then let them close.

Colonel Harris: You asked me if I had any Virginia cases, Your Honor, and I stated to you that I had briefed from the standpoint of the Kentucky law, but I went through the Digest from beginning to end, as well as I could, and I listed some Virginia cases and made a note that they were to the same effect as the quotations I have given you.

For instance, the case of *American Oil Company v. Lovelace*, 143 Southeastern 293, 150 Va. 624, Paragraph 5 of that opinion, which says: "Profits may only be re-  
page 187 } covered where they can be ascertained with reasonable certainty."

Other cases from Virginia which support our side are a milling company case from 171 S. E. 681, 161 Va. 642, and in another case of *Cricorian v. Dailey*, 187 S. E. 447, 171 Va. 16. I didn't quote from them because I didn't expect to have to argue. As I recall and as I have noted, they are like the Kentucky cases.

Mr. Fred G. Pollard: Your Honor, Mr. Robertson has referred to the situation of the Island Creek Coal Company and its subsidiaries. Pond Creek Pocahontas Coal Company is not a subsidiary of Island Creek Coal Company.

Mr. Robertson: It has the same management, I will tell you that.

Mr. Fred G. Pollard: Thank you for interrupting me, sir.

Mr. Robertson: You are welcome.

Mr. Fred G. Pollard: So whatever contracts Mr. Bryan may have had or may have expected to get, or whether he had done work in the past for Island Creek Coal Company, has nothing to do with this case. The part of the Notice of Motion which Mr. Robertson read says, "has caused plaintiff's work in Breathitt County \* \* \* to be stopped and its said contracts to be cancelled, and further caused Plaintiff to lose other contracts for work which would have resulted in large profits to Plaintiff." He says "other contracts for work which would have resulted in large profits." page 188 } It doesn't say other contracts that he could have gotten. It said other contracts that they have got.

To carry it further, the Notice of Motion says that the United Mine Workers, the said District 50, and the said United Construction Workers, each jointly and severally ratified and approved and confirmed the acts of the said William O. Hart and his mob against the plaintiff at Breathitt County, Kentucky, for the purpose of wilfully, maliciously and unlawfully attempting to destroy the Plaintiff's business and to prevent the Plaintiff from continuing lawfully to work within the State of Kentucky \* \* \*."

So when we get outside the State of Kentucky, it again becomes immaterial and outside the scope of the Notice of Motion.

To show also, when Mr. Bryan testified, he testified that he had made so much money, and it worked out to about \$25,000 a year, and that he had had a gross business of \$20 million over the last ten years.

I would like to call your attention to these questions which we asked in our interrogatories, and which were not answered by the Plaintiff, and which they objected to answering and which you ruled that they did not have to answer:

Question 18 asked by the Defendants: "What page 189 } was the total dollar volume of work performed by the Plaintiff in the State of Kentucky in 1949 and in each of the five years next preceding 1948?"

Mr. Robertson: I answered that.

Mr. Fred G. Pollard: You never served a copy on the defendants.

Mr. Robertson: I don't know about that, but it is answered, and it is up here and the Court ruled on it. It was answered.

Mr. Fred G. Pollard: "What was the value of the good will on Plaintiff's balance sheet as of December 31, 1949?"



"What was the net profit before taxes of the Plaintiff in 1949 and in each of the five years next preceeding 1949?"

"What is the net worth of the Plaintiff?"

"Furnish a copy of the Plaintiff's balance sheets for 1948 and 1949."

This is the same line of questions to which he is now testifying. If we couldn't get it before trial by interrogatories, and they objected to giving it then and you ruled they didn't have to give it, certainly he ought not now to be allowed to testify to it, because we haven't had a chance to prepare our case on that part of the matter.

Mr. Robertson: I am going to let these other page 190 } gentlemen answer.

Mr. Mullen: May I say one word, Judge?

There are two things I want to mention. First, Mr. Robertson says that this contract made in October, 1948, that a part of the consideration thereof was the promise to secure this other work, and therefore they have a right to show that. The contract itself expressly negatives that. It states that there are no understandings, no other agreements, nothing except what is expressed in this contract.

Mr. Robertson: Read what you are quoting. Read the statement in the contract that you are referring to. You don't have to read it. When you are through there, I can tell you what it is.

Mr. Mullen: I know what it is.

Mr. Robertson: Your Honor, the fee under this contract—

Mr. Fred G. Pollard: Please let us finish, will you, Mr. Robertson?

Mr. Mullen: "This agreement constitutes the entire contract between the parties, and there are no understandings, representations, or warranties of any kind not expressly set forth herein."

He has said that a part of this contract, a part of the consideration for this contract was this promise to give them additional work. It is negatived by their own page 191 } contract.

The second thing is, I go back to the question and the objection I made that started this, and Your Honor has asked them, and they have not answered it, how they could bring themselves under an exception to the rule that conversations with third parties are not admissible. They have not answered and have not attempted to answer that.

Mr. Robertson: Are you through?

If Your Honor please, he didn't read the other part of the



contract that the fee there is limited under that contract to \$12,000, and by any side agreement or anything else they couldn't get anything additional to that. That is what they meant there, and that is what the contract says. There was the promise of future work.

We might just as well go to that, too, as to how we get around that it was a statement to a third person. It is an exception to the rule and it does not apply here. It is an element in our damages, just as Mr. Mullen indicated in his opening statement that he was going to talk about what happened at the meeting at Tiptop.

The Court: I want to know how you get around that. You say it is an exception.

Mr. Robertson: I say it is an exception. I say it is an element of our proof, and that we can show it is a part of the consideration.

page 192 } Mr. Fred G. Poliard: That is a new one.

Mr. Allen: If Your Honor please, I think that these gentlemen on the other side are arguing entirely beside the question here, and the cases cited by them show that they are. The real issue here is not the recovery of profits as such, because they were prohibited from getting future contracts.

In the first place, the questions which Mr. Robertson asked—

Mr. Robertson: I knew I had one thing, and then I won't interrupt you any more.

Salvati promised the \$600,000 worth of work to Bryan at cost plus 5 per cent, regardless of anything else.

Now, go ahead.

Mr. Allen: I was coming to that.

The questions were designed to bring out the fact that Salvati had already agreed to give a good deal of this additional work.

In addition to that, you can read the Notice of Motion from beginning to end, a dozen times, and if there is anything in it, there is this in it: These people, by tortious wrong, not merely the violation of a contract but by a tort and an aggravated tort, destroyed a business connection. We have a right to show what that business connection was and leave it to the jury to say what it was worth if it could have been maintained.

page 193 } You asked Mr. Robertson about the hearsay rule in reference to Salvati, in Mr. Bryan's talking with Salvati. I think the hearsay rule can be completely satisfied there by asking Mr. Bryan questions something like this:

"What have you to say with reference to the connection established, and what you reasonably expected to do under it?"

He need not go ahead and report verbatim conversations with Mr. Salvati or anybody else, but he can certainly give the connection, the assurances, without quoting words, and the situation which had developed and grown up there between his company and Mr. Salvati's company and the subsidiary of Mr. Salvati's company.

As I say, it goes right back to the destruction of an established business which had been going on with those people for some two years or more, and in which these gentlemen admit substantial profits were made, an average of \$25,000 a year. The business was broken up, the connection was destroyed.

In telling about that connection and what it was and what the prospects were under it, the matter of these contracts comes in incidentally. It is just one of the ways of bringing in and telling the jury the whole story of what has happened to this Plaintiff as a result of this aggravated tort which was committed against him.

The Court: Do you contend he can tell what page 194 } Mr. Salvati told him?

Mr. Allen: Judge, you ask me frankly, and I am going to answer you frankly my own opinion about it.

According to the authorities, it is better, from our viewpoint, you understand, to let him give the description of the situation without quoting the words of Salvati and reporting conversations back and forth between him and Salvati. He can say he was assured of this and so; that he had been working for those people for two years; that his work had been entirely satisfactory, so satisfactory that not only a friendly relation had been built up between them, but a business relationship that was highly regarded by those companies. He can say, "I went into this business with the understanding that that relationship would continue, and that as a result of that relationship, other business would come."

He can tell the story like that, under the rules of evidence, without quoting verbatim anything that anybody said. I think that is absolutely permissible.

Mr. Robertson: I thought you were through, Mr. Mullen.

Mr. Mullen: I wanted to ask a question. He brought up a new matter now. He proposes to follow a different plan and have him testify as to what were his expectations.

That matter we are not considering. That is page 195 } just as inadmissible as the other.

Mr. Moore: Suppose it arose this way: suppose it arose that a third party induced a breach of an oral contract between A and B. In the trial of the case to determine the amount of the damages, you certainly would have to get to what was the essence of that contract. Under the rule that they are advocating, neither A nor B could come in and say what the contract was, because whatever conversation they had about the contract didn't take place in the presence of a third party.

From the point of speculative damages, you don't have to read many of these cases to find that the real heart of it is to show if there is an established business, then you can recover these future profits. The cases that Mr Harris cited, the case of the huckster, the second a jockey, and the third a sharecropper, I can't think of three more uncertain classifications than those. Mr. Bryan has done exactly the opposite. He has shown that he has had this \$20 million business over the last ten years, \$2 million a year, and I think he has laid the groundwork to show an established business, as set forth in these cases.

The Court: As the question is asked, I will sustain the the objection, but will allow evidence along the line that Mr. Allen suggested.

Mr. Robertson: I want to try to conform to page 196 } the ruling of the Court, Your Honor. I will go in there and say, "Incidental to your execution of the contract of October 28, were you assured by Mr. Salvati that you would be awarded additional work?"

The Court: Don't refer to any conversations.

Mr. Fred G. Pollard: He can't do that. The contract has been put in evidence.

The Court: Leave out Salvati's name.

Mr. Robertson: That is all right.

Mr. Fred G. Pollard: We might as well straighten that out right now. He is introducing, then, parol evidence to go beyond the contract he has already introduced in evidence.

Mr. Robertson: All right, it is an addition to it.

Mr. Allen: As a matter of fact, we have the agreements for other contracts.

Mr. Mullen: If you ask that, can't I come back with the same point as something showing a conversation with a third party?

Mr. Fred G. Pollard: If you allow testimony about any other agreement he had with Salvati, you are letting him introduce parol evidence in contradiction to the contract

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*Alexander Hamilton Bryan.*

which already has been introduced in evidence. This contract says that this agreement constitutes the entire contract between the parties and there are no undertakings, representations or warranties of any kind not expressly set forth herein.

So he would be introducing parole evidence.

The Court: It is related to that contract, is it not?

Mr. Allen: The parol evidence rule has no place in this case on that issue.

Mr. Fred G. Pollard: We note an exception.

Mr. Mullen: We note an exception.

page 198 } (The following proceedings were had in open court:)

By Mr. Robertson:

Q. Mr. Bryan, when you were on the stand before you mentioned a contract of October 28, 1948 between Laburnum and the Pond Creek Pocahontas Company. At about the time of the exclusion of that contract with them were you given any assurance of future construction?

Colonel Harris: Do I understand that our agreement gives us an objection to this question on all the grounds that we have previously asserted?

The Court: That is true.

Mr. Pollard: And runs to the entire line of questions.

The Court: It runs to the entire examination of this witness.

By Mr. Robertson:

Q. Do you remember the question?

A. Yes, sir.

Q. Answer it, please.

A. At the time we executed the contract with Pond Creek Pocahontas Company dated October 28, 1948, it was agreed with Pond Creek Pocahontas Company that Laburnum would perform additional work in Breathitt County amounting to approximately \$600,000 and that the work would be performed on a basis of cost plus a fee of 5 per cent.

page 199 } Q. Mr. Bryan, basing what you say upon the experience you had had with Island Creek Coal Company, the Pond Creek Pocahontas Company up to the time of the contract of October 28, 1948, what have

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you to say to the temporary or permanent character of your business connections with those two companies?

A. It was a permanent connection.

Q. What have you to say generally regarding the value of that connection?

Colonel Harris: May we offer an additional ground to that, that it calls for an unauthorized opinion and conclusion and speculation of the witness.

The Court: I will overrule the objection. Go ahead.

Mr. Pollard: We except.

The Witness: Based on our experience in doing work for Pond Creek Pocahontas Company, Island Creek Coal Company and their associate and subsidiary companies, we had earned approximately \$25,000 per year net job profits from those operations. Pond Creek Pocahontas Company had agreed that we were to perform additional work amounting to approximately \$600,000 in Breathitt County alone. Island Creek Coal Company had said they wanted us to handle their building program in West Virginia. Both of those companies continuously have worked in and around the mines. It never stops. There is no telling how much money we might have been able to earn—

Colonel Harris: We object to that as argumentative on the part of the witness taking the place of the lawyer.

The Court: I sustain the objection.

Colonel Harris: Will Your Honor exclude that argument?

The Court: Yes. Gentlemen of the jury, you will disregard the statement made by Mr. Bryan.

The Witness: Estimating \$25,000 is a conservative figure for what we might have made from our operations with that group of companies in East Virginia and Kentucky.

Mr. Mullen: No objection to this document.

By Mr. Robertson:

Q. I hand you a paper entitled "Construction Agreement between Pond Creek Pocahontas Company, Kentucky Division, Huntington, West Virginia, and Laburnum Construction Corporation Richmond, Virginia, subject, Construction of Coal Preparation Plant at Number 1 Kentucky Mine, Breathitt County, Kentucky, October 28, 1948, Copy No. 3," and ask you if that is an executed copy of the contract of October 28, 1948 that you have mentioned.

A. Yes, it is.

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Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 5.

(The document referred to was marked Plaintiff's Exhibit No. 5 and received in evidence).

page 201 } Mr. Robertson: I don't think it is necessary to  
read that contract at the present time, Your  
Honor.

By Mr. Robertson:

Q. Mr. Bryan, approximately how soon after the execution of that contract on October 28, 1948, did Laburnum go to work on the job in Breathitt County, Kentucky?

A. Almost right away, the first day of November 1948.

Q. Where did you get your labor?

A. Are you referring to any particular class of labor?

Q. I am referring to your carpenters.

A. In line with our practice as contemplated by the agreement which we had with the Richmond Building and Construction Trades Council, we got in touch with—

Colonel Harris: Judge, may we object to that statement. The question was very simple, where did you get your labor.

The Court: Suppose you answer the question and be as specific as you can, Mr. Bryan.

By Mr. Robertson:

Q. Mr. Bryan, you have a right to say where you got your labor and then state your reason or the circumstances under which you did get it.

A. We got in touch with the business agent of Paintsville, Kentucky, carpenters local union No. 646, affiliated with the American Federation of Labor.

Q. Did you get labor from that local?

page 202 } A. We got carpenters and millwrights through  
that local.

Q. Were other classifications of labor furnished you from other locals of the A. F. of L?

A. Yes, sir.

Q. State what they were generally and what local sent them to you, if you recall.

A. We got in touch with the Charleston, West Virginia, Iron Workers Local Union, and they referred to us riggers, structural iron workers.

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Q. Was that A. F. of L. labor?

A. Yes, sir. I don't recall the number of the local union right now. I have it in my files.

Q. Did you get any other labor through any other locals of the A. F. of L.?

A. We got in touch with the plumbers and pipefitters local union at Lexington, Kentucky, and made arrangements for pipefitters to be referred to us. We also got in touch with the electricians local union at Lexington, Kentucky, and made arrangements for electricians to be referred to us.

Q. Were all those locals A. F. of L. locals?

A. They were all affiliated with the A. F. of L.

We also were in touch with the laborers local union at Lexington, Kentucky.

Q. Were the locals that you contacted the locals with appropriate jurisdiction and the nearest locals, page 203 } so far as you know?

A. As far as I know, they were.

Q. At that time was there any A. F. of L. carpenters local at Salyersville, Kentucky?

A. When we started work in November 1948 there was no carpenters local union at Salyersville.

Q. Do you know whether it is or is not a fact that an A. F. of L. carpenters local was subsequently established at Salyersville on May 9, 1949?

A. I don't remember the exact date, but during May, 1949, the carpenters local union affiliated with the A. F. of L., known as Local No. 697, was chartered at Salyersville, Kentucky.

Q. When you first commenced work out there, do you know whether or not any of the laborers you employed were not organized in the sense that they were not affiliated with any local of any kind?

A. The closest local union for the laborers was at Lexington, which is about 150 miles away from the job. We employed local labor near the job site, with the approval of the business agent of the Lexington Laborers Local.

Q. You have stated that Laburnum commenced work upon this coal preparation plant very shortly after it signed this contract of October 28, 1948. Will you describe to the jury

page 204 } the location where this coal preparation plant was built, indicating what kind of country it is, how built up or otherwise it is, and was at that time?



*Alexander Hamilton Bryan.*

A. The first time that I went to the job site it was either in the latter part of September or the first part of October, 1948. We drove in an automobile to a place called Lambert, Kentucky.

Q. Where did you start from?

A. Mr. Menk, who was the General Engineer of Pond Creek Pocahontas Company drove us from Logan, West Virginia, over to Paintsville and from there to Salyersville and from there to a little store known as Lambert, and from there we may have gone a few miles further where the car had to be abandoned. We were met by a jeep and taken in a jeep four or five miles further into the wilderness to the job site.

Q. Approximately how far is it from Paintsville to the job site?

A. Along the road which is now used Salyersville is about 25 miles from the job site and Paintsville is about 18 miles east of Salyersville.

Q. If you got off the train at Huntington, West Virginia, and go to the job site, what is the best way to go?

A. The only way to go that I know of would be either on a bus or in an automobile. We usually rented a U-Drive-It car and would drive down there.

Q. How far is the job site, approximately, from page 205 } Huntington?

A. 85 or 90 miles.

Q. If you were going from Huntington to the job site, would you go first to Paintsville or near Paintsville?

A. You would drive from Huntington southwardly along the road leading to Williamson, West Virginia. Then you come to a turn off from that road, and you go over to Louisa, Kentucky, which is just across the Big Sandy River from West Virginia. From Louisa you drive about 30 or 35 miles to a little town—you wouldn't even call it a town. It is just a crossroads. You turn to the left and go to Paintsville, and you turn to the right and you go about 15 miles to Salyersville.

Q. How far is that cross road from Paintsville?

A. I would say about three miles.

Q. How far is it from Paintsville to the job site, approximately?

A. Along the highway it is about 43 miles.

Q. And approximately how far is it from Salyersville to the job site?

A. About 25 miles.

*Alexander Hamilton Bryan.*

Q. If you left Salyersville to go to the job site, would you pass through a place known as Royalton?

A. Along the road now used, you do.

page 206 } Q. How big a place is Royalton?

A. A couple of hundred people.

Q. Has the location of the road been changed since you first went out there?

A. The road has been considerably improved now.

Q. Is it on the same location, substantially the same or substantially a different location?

A. I think it is the same substantially, the same location, but it has been widened and improved. The road which branches off from the road going past Royalton and which leads over to the job site has been improved and its location has been somewhat changed.

Q. On the first occasion that you went out there, describe what was at the job site when you got there.

A. There was nothing at the job site where the tipple was to be built. There were one or two shacks that Pond Creek Pocahontas people had put up for its people to stay in in getting the work under way.

They were at the location, the place called Evanston, which is about a mile from the tipple.

Q. How big a place at that time was Evanston?

A. Just two or three houses out in the mountains.

Q. Were there any telephone communications to Evanston on the job site?

A. At that time there were none.

page 207 } Q. Was there any railroad in there at that time?

A. There was no railroad in Breathitt County.

Q. Was there any post office out there?

A. There was a post office at Royalton.

Q. Was that the nearest post office?

A. There may have been the post office address between Royalton and the job site but I don't know of any.

Q. What would you say was the general character of the country right there at the job site? Was it on the plains or in the mountains or at sea or what?

A. There were steep mountains thickly covered with trees. It was just wild and desolate. That is the only way I can describe it.

Q. Was the job site down along a small creek or was it up above the creek?

A. There was a little creek there.

*Alexander Hamilton Bryan.*

Q. Do you remember whether or not you had to blast out a level place for the foundation of the tipple?

A. Yes, we did.

Q. What kind of coal operation was this as compared with either digging in the ground for it or stripping it off the surface.

A. This was a coal preparation plant to service a strip mine operation. A strip mine operation involves getting the coal off the top of the mountain and dumping it  
page 208 } in a place called a head house at the top of the mountain, where it was taken down a long conveyor about a thousand feet in length known as a rope and button conveyor. From the rope and button conveyor the coal would be taken into the coal preparation plant, where it would be washed and sorted and screened according to size and made ready to be dumped into the coal cars when the coal cars were there.

Q. How was the coal stripped and brought to the head house and delivered to the conveyor to take it down to the tipple?

A. A contractor named Daniels had some enormous shovels up on top of the mountain. The coal would be blasted out. I might say first that the overburden would be removed, all the trees cut down and you get down to the seam of coal.

Q. You mean you would lay back the dirt from over the coal?

A. That is right. Then these huge shovels would scoop the coal up—

Colonel Harris: Judge, aren't we taking a lot of time on a matter that doesn't concern the issues of the case?

Mr. Robertson: To describe the nature of the work, the difficulty of the work. I am coming right along to it. One of my very next questions is going to be how much above the tipple was this head house at the top, just describing a wild, difficult situation out there.

page 209 } The Court: Let us not go into too much detail.

Mr. Robertson: I don't expect my friends to think it interesting. I think it is to the rest of us.

Colonel Harris: I might say that I think we ought to try the lawsuit and not go afield. It is going to take a long time anyway.

Mr. Robertson: You remember that the next time we go back in the Judge's chambers, will you?

Mr. Mullen: You did all the talking.

*Alexander Hamilton Bryan.*

The Witness: The coal would be put into big trucks and hauled to the head house and dumped into the head house and then taken on to the conveyor by them.

By Mr. Robertson:

Q. Do you know how much higher the head house was than the tipple?

A. Six or seven hundred feet.

Mr. Robertson: These are the same pictures that I used as illustrations in the opening statement, but I don't think it is necessary at this time to take the time of the jury to examine them again, since Colonel Harris is in a hurry, but I do want to introduce them so they will be in the record.

Colonel Harris: Judge, I am not in a hurry. I just don't want to waste time.

Mr. Robertson: I think we understand each other.

Mr. Mullen: No objection.

page 210 } The Court: Do you want to file those as one exhibit or separate exhibits, Mr. Robertson?

Mr. Robertson: Judge, I would think probably separate because they are likely to get separated anyway. I can do it very quickly.

The Plaintiff offers in evidence ten different instruments, five of which are individual photographs, and the others of which are one or more photographs attached to cardboard and ask that these exhibits be marked respectively Plaintiff's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

The Court: Mark them now.

(The photographs referred to were marked Plaintiff's Exhibit 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 respectively and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, will you continue with the blueprint that I used to illustrate my opening statement to the jury. Are you familiar with that?

A. Yes, sir.

Q. Does that blueprint correctly show the layout there of the coal preparation plant and the little hamlet of Evanston and the school house?

A. Yes, sir.

*Alexander Hamilton Bryan.*

page 211 } Mr. Robertson: I offer the sketch in evidence  
and ask that it be marked Plaintiff's Exhibit No.  
17.

Mr. Mullen: No objection.

(The blueprint referred to was marked Plaintiff's Exhibit 17 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, what kind of equipment did you have to take to the job site for the execution of this contract of October 28, 1948?

Mr. Harris: May we have an objection to that question, Judge, as going too far afield?

Mr. Robertson: If Your Honor please, I am going to show the difficulties of this job and the reason why in undertaking this job he was given assurances of other jobs.

The Court: I will overrule the objection. Go ahead.

Mr. Mullen: Note an exception.

By Mr. Robertson:

Q. I think we can shorten it a little, Mr. Bryan. At my request have you made a tabulation of the equipment which was there?

A. Yes, sir.

Q. Without going through all the items, name what heavy equipment you had there that you would class as  
page 212 } heavy equipment.

A. We furnished a guide derrick with a 100-foot boom and a 150-foot mast which would be used to lift the heavy timbers into place for the tipple and also the heavy machinery such as a washer which would be installed in the tipple. We furnished a 3-drum hoist, a gasoline engine, a double-drum hoist gasoline engine. We furnished a number of concrete carts, electric drills, jackhammers, vibrators, log saws, wheelbarrows, skill saws.

Q. Did you have any trouble getting that equipment up there?

A. The roads were in terrible condition. Most of it was shipped out of Richmond, consigned to us at Carver, Kentucky.

Q. How far was that from the job site?

A. I think it was four or five miles, I am not positive about that.

*Alexander Hamilton Bryan.*

Q. How did you get it from Carver over to the job site?

A. It would be hauled on trucks when you could get over the road.

Q. Did you have to get any of it in there with a bulldozer?

A. After the bad weather set in during the winter, the roads were just a quagmire.

page 213 } Q. At my request have you made a tabulation of the equipment you took in there on that job and given an evaluation of it?

A. Yes, sir. This list shows the construction equipment—

Colonel Harris: May we object to the question of the evaluation of the equipment, Judge. There isn't any claim that the equipment was destroyed. I don't see how it possibly can come in.

Mr. Robertson: There is no claim that they took any equipment away from us. I think it is relevant, your Honor, the value of the equipment, certainly showing some indication of what kind of equipment they got in there. If I went in there with \$5 worth of equipment or one wheelbarrow, \$2.50, that would be one thing. If I went in there with \$16,000 worth of equipment it would show that I was operating in a more stable and dependable way.

The Court: I will allow the witness to go ahead.

By Mr. Robertson:

Q. Is that the list?

A. I prepared a statement showing the construction equipment, office equipment, and camp and commissary.

Q. What is the value of it?

A. It amounts to a total of \$16,047.90.

page 214 } Q. I notice that that tabulation is entitled "Statement of Construction Equipment, office equipment, and camp and commissary equipment furnished by Laburnum Construction Corporation in connection with job for Pond Creek Pocahontas Company in Breathitt County, Kentucky, under contract dated October 27, 1948." Is that date the 27th there or should it be the 28th?

A. What is the date of the contract, the 27th or the 28th? Whatever the date is.

Mr. Robertson: It is the 28th (showing the contract to the witness).

*Alexander Hamilton Bryan.*

The Witness: That is a typographical error. It ought to be the 28th.

By Mr. Robertson:

Q. Will you change it to the 28th?

A. Yes, sir (witness writing on document).

(Document exhibited to Mr. Mullen.)

Mr. Mullen: I believe Your Honor has already ruled it can go in.

The Court: I haven't ruled.

Mr. Mullen: I object to its going in. It has no bearing on this case.

Mr. Robertson: I offer it in evidence, Your Honor, for the reasons I have already stated.

The Court: I will overrule the objection.

Mr. Robertson: I offer it in evidence and ask page 215 } that it be marked Plaintiff's Exhibit No. 18.

Mr. Harris: Exception.

(The document referred to was marked Plaintiff's Exhibit 18 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, you stated that soon after you started to work under the contract of October 28, 1948, you contacted the carpenters local at Paintsville and arranged with that local to furnish you carpenters and millwrights, I think you said. Did you subsequently enter into a written contract with the Paintsville local carrying that arrangement into written form?

A. Yes, sir.

Mr. Mullen: No objection.

By Mr. Robertson:

Q. I hand you a contract dated December 14, 1948, which purports to be signed by Laburnum and the union, and ask you if that is the contract to which you referred.

A. This is a copy of our agreement with Paintsville Carpenters Local No. 646.

Q. An executed copy?

A. An executed copy dated December 14.



*Alexander Hamilton Bryan.*

Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 19.

page 216 } (The document referred to was marked Plaintiff's Exhibit 19 and received in evidence.)

By Mr. Robertson:

Q. Mr. Bryan, pursuant to the assurance you were given for other work when you undertook the contract of October 28, 1948, were you awarded by the Pond Creek Pocahontas Company a contract to build a telephone line?

A. Yes, sir; we were awarded a contract by Pond Creek Pocahontas Company to construct a telephone line extending eleven miles from Carver, Kentucky to the job site. That is the distance Carver is from the job. I had forgotten that.

(Document shown to Mr. Mullen.)

Mr. Mullen: This is the same one you heretofore furnished us, a copy of it?

Mr. Robertson: I think so.

Mr. Mullen: No objection.

By Mr. Robertson:

Q. I had you a construction agreement dated December 8, 1948, between Laburnum Construction Corporation and Pond Creek Pocahontas Company, entitled "Construction agreement, construction of approximately 11 miles of telephone line from Carver, Kentucky to Camp No. 1 at No. 1 Kentucky Mine, Breathitt County, Kentucky," and ask you if that is an executed copy of the contract you have mentioned.

A. Yes, it is.

page 217 } Mr. Robertson: I offer the contract in evidence and ask that it be marked Plaintiff's Exhibit No. 20.

(The document referred to was marked Plaintiff's Exhibit 20 and received in evidence.)

Mr. Robertson: I don't want you to stop and go back to your records at this time, but do you remember approximately what the money was involved in that telephone contract?

The Witness: Yes, sir; I can tell you. It was \$4,591.55.

*Alexander Hamilton Bryan.*

By Mr. Robertson:

Q. Was that done on a cost-plus basis?

A. Cost plus 5 per cent.

Q. Also pursuant to this assurance of additional work, did the Spring Fork Development Company award you any contract there at Evanston, Kentucky?

A. Yes, sir.

Q. Is that the contract which has been mentioned here for the construction of 25 dwelling houses?

A. That is right.

(Document shown to Mr. Mullen.)

Mr. Mullen: No objection.

By Mr. Robertson:

Q. I hand you what appears to be an executed copy of a contract dated December 15, 1948, entitled "Construction agreement between Spring Fork Development Company and Laburnum Construction Corporation, Richmond, Virginia, subject: Construction of 25 dwellings near No. 1 Kentucky Mine of Pond Creek Pocahontas Company, Breathitt County, Kentucky, Copy No. 2," and ask you if that is an executed copy of the agreement to which you referred about the construction of 25 dwelling houses?

A. It is.

Mr. Robertson: I offer the agreement in evidence and ask that it be marked Plaintiff's Exhibit No. 21.

(The document referred to was marked Plaintiff's Exhibit 21 and received in evidence.)

By Mr. Robertson:

Q. What was the amount of money involved in that contract?

A. The cost of the work up until the time it was stopped on July 26, 1949, amounted to \$41,282.05.

Q. Was that on a cost-plus basis?

A. That work was on a basis of cost plus 5 per cent, with a ceiling of \$2,500 on the fee.

Q. Something has been said about your 25 dwellings being subsequently covered with asbestos shingles. How did that happen?

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A. The 25 dwellings were constructed out of green lumber furnished by Pond Creek Pocahontas Company.  
page 219 } The cost of that lumber is not reflected in the figures which I gave you. After the dwellings were put up, the lumber dried out and some cracks appeared in the walls. Anyway, Pond Creek Pocahontas Company thought that it would be better if they were covered with asbestos shingles.

Q. You did that work. Were you given extra compensation for that work?

A. That was work which we were to get started on during August. We had been instructed to proceed. Pond Creek had purchased the asbestos shingles. But we never started on it because of the trouble which happened on July 26.

Q. Was that commitment for putting on the asbestos shingles a written commitment or a verbal commitment?

A. No, that was just a verbal commitment. It was a part of the additional work which it had been agreed we would handle.

Q. What was the estimated cost of that?

A. I have it here, I think. My recollection is now that it was about three or four thousand dollars. I have it.

Q. You can get it later.

A. I can't recall offhand. It wasn't a big job.

Q. Also pursuant to that assurance of additional work were you awarded any contract for the construction of a school house out near the job site?

A. Yes, sir.

page 220 } Q. What was that?

A. The Pond Creek Pocahontas Company wanted to have a school house constructed for children to go to who lived at Evanston. We were instructed to construct the school house. We commenced work during July, 1949, but did not complete it because of the interruption which occurred in our work on July 26.

Q. Have you got there the figure of the estimated cost of the school house, or will you have to get that?

A. I will have to get that.

Q. Do you remember whether that was on a cost-plus basis?

A. That was on a basis of cost plus 5 per cent.

Q. Now take the date of July 26, 1949, which was the date that Plaintiff claims the work was stopped. How near completion was the coal preparation plant at that time, in what per cent would you say, if you can estimate it?

A. I would say the coal preparation plant was about 95

*Alexander Hamilton Bryan.*

per cent complete, based on the work that we then knew about.

Q. Was it in operation?

A. Yes, sir. The coal preparation plant went into operation during the month of June.

Q. I believe you said, and it has been mentioned here, that the top fee that Laburnum would get out of the page 221 } building of that coal preparation plant as originally contemplated was \$12,000.

A. That is correct.

Q. Was that fee paid in full?

A. Yes.

Q. Did the C. & O. Railroad also build a railroad in there to take care of the coal that would come out of this mine?

A. Yes, sir. That was the only way to get the coal out.

Q. Was the tipple ready for the railroad or did the railroad have to wait for the tipple when they got ready to load the coal?

A. It was a sort of a race between ourselves and the C. & O. to see who would get the work done first. Of course the C. & O. was very anxious to have coal to ship as soon as it got the tracks in. The Pond Creek Pocahontas Company wanted to be able to ship coal as soon as the tracks were in. Neither side wanted to hold up the other.

Q. Who got ready for operation first, the railroad or Laburnum?

A. We were ready to ship coal about two days before they got the tracks completed in to the tipple.

Q. Who was the contractor building the railroad?

A. Codell Construction Company, I think.

Q. Was there another contractor doing work there for crushed stone for roadways around through the work?

A. Codell Construction Company was doing page 222 } some work on the railroad and was digging the shaft and slope for the No. 2 mine of the Pond Creek Pocahontas Company. Allen Codell had a job on what they called the rock crusher. He was crushing stone to be used in connection with the work.

Q. My own memory is not clear on this. Up to July 26, 1949, had you been given any work for any addition or enlargement or repair of coal preparation plant No. 1?

A. There had been talk about installing a heating plant at the No. 1 mine, and we had been requested to work up figures on that and to make suggestions as to how they could thaw out the frozen coal in the wintertime.

*Alexander Hamilton Bryan.*

Q. That was as far as that had progressed on July 26?

A. They had made some study of it and were prepared to make recommendations. They had said that we were to do that work.

Q. Prior to July 26, 1949, had you had any discussions with Island Creek or Pond Creek Pocahontas about the foundation of any other mine tippie?

A. We had been instructed to install concrete foundations for the No. 2 mine. They now call it the No. 3 mine.

Q. Now I hand you a photograph marked Plaintiff's Exhibit No. 9 and ask you if that shows substantially correctly the coal tippie with the conveyor and head house as it had progressed toward completion about July 26, 1949.

A. This is a picture of the tippie after it was page 223 } completed. At the time our work was stopped in July 26, 1949, a lot of the aluminum siding had not been put on.

Mr. Robertson: If Your Honor please, I have come to a phase of this testimony which is on July 14, 1949, which begins our controversy with Mr. Hart. I don't know whether you want to adjourn or start in on that after recess.

The Court: Let us adjourn until 2:15.

(Whereupon, at 12:45 o'clock p. m. the Court recessed until 2:15 o'clock p. m. the same day.)

page 224 } AFTERNOON SESSION.

(2:15 p. m.)

Colonel Harris: Judge, before we resume the direct examination, this morning when I asked about having the objection to questions along the same line, I inadvertently left off the word "exception," as I recall. Of course, what we wanted was both the objection and the exception to everything.

The Court: Let the record show that.

Colonel Harris: Thank you, sir.

Whereupon,

*Alexander Hamilton Bryan.*

ALEXANDER HAMILTON BRYAN

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued).

By Mr. Robertson:

Q. Mr. Bryan, there are a few questions that I failed to ask you this morning which I should ask you before we get to questions about July 14.

During the progress of the work at the job site in Breathitt County, what arrangements did you make to house and feed the men who were working for you?

Colonel Harris: We object to that, sir. We don't see the materiality of that.

Mr. Robertson: If Your Honor please, I think we might as well—

The Court: What is the materiality of it?

page 225 } Mr. Robertson: The materiality of it, Your Honor, is to get the whole picture before us of the isolated, dangerous condition of this work, and the surroundings out there, and how those men were shut in there, and they had to live in these barracks and eating houses in those hills. I want so say, Your Honor, I think Your Honor knows me well enough to know that I am not stalling to prolong this case or to drag it out. I am just as anxious as anybody else to keep it moving and to press forward toward the conclusion of it.

We are suing here in all earnestness and good faith for the biggest lawsuit that I personally have ever been in, and we can't belittle it and pooh-pooh it by trying to hasten it and hurry it and hustle it to deny us an opportunity to put all the details that we think are necessary to paint this picture to the jury. I am doing that in good faith, and in all sincerity.

The Court: Counsel for the defendants have a right to object at any time, and the Court will rule.

Mr. Robertson: I am saying when you get the number of men that this crowd had out there, out in the bushes out there, 100 miles or so from Huntington and out in the kind of country that they were in out there, and then got them herded up into a barracks and a bath house and an eating house  
page 226 } and a commissary there, and everything, they were just isolated out in the mountains and at the mercy of the United Mine Workers. That is the materiality of it.

Mr. Fred G. Pollard: Your Honor, I would like to ask that

*Alexander Hamilton Bryan.*

Mr. Robertson's remarks be stricken, because he is just arguing the case on a lot of stuff that hasn't been put in evidence. It is entirely improper.

Mr. Robertson: We can't put it in but step by step, Your Honor.

The Court: Under the circumstances, I will allow the question to be answered.

Colonel Harris: Will you note an exception?

Mr. Robertson: Do you agree that it is a continuing one to this entire line of testimony?

Colonel Harris: That is agreeable, with the approval of the Court.

The Court: That will be all right.

By Mr. Robertson:

Q. Mr. Bryan, while this work was under way at the job site in Breathitt County, Kentucky, what did you have to do to feed and house the men who were working for you?

A. There were no facilities at the job site whatsoever. Under our agreement with Pond Creek Pocahontas Company, they were to reimburse us for the cost of barracks, mess halls, bath houses, and other temporary buildings which  
page 227 } we were to put up to provide for our workers.

On the other hand, the cost of kitchen equipment, cots, bedding, refrigerators, and other things like that, which were necessary to have in order to take care of these men and to feed them, we had to furnish, and of course, we charged the men something for board, \$2 a day, to take care of the cost of food and other things.

During the winter months, particularly, it was impossible for the people to go back and forth every day. They had to live in these barracks and to eat in the mess halls. We engaged cooks and bought the food and did everything that was necessary to take care of them, just like you would have to do if they were living in your home. Of course, it was rough, but we did the best we could.

Q. Did you build the barracks there?

A. Yes, sir.

Q. How many men did it accommodate?

A. I think we had facilities to take care of close to 100 men.

Q. Did you build a mess hall?

A. Yes, sir.

Q. Was that to take care of substantially the same number?

A. Yes, sir.



*Alexander Hamilton Bryan.*

page 228 } Q. Did you build a bath house for them?  
A. Yes, sir.

Q. What wages did you pay your common labor?

A. Ninety cents an hour.

Q. Was that to the satisfaction of the A. F. of L., with which you are dealing?

Colonel Harris: We object to the question of whether the A. F. of L. was satisfied or not, if the Court please. It is wholly immaterial whether the A. F. of L. was satisfied or not.

Mr. Robertson: If Your Honor please, here is the materiality of it: We were under a contract, as has been shown here, with the A. F. of L. to employ A. F. of L. labor. I think it goes to whether we were supposed to work in harmony to the extent that we could with the A. F. of L. They have already said here in the opening statement, I think, or intimated that they were going to develop here that we were chisling our laborers and not paying them what they ought to get, and that they were thoroughly dissatisfied with it, so much so that they were having these meetings with Hart and organizing a strike to get \$1.50 an hour. That is the materiality of it. We are showing that they were getting 90 cents an hour and thoroughly satisfied.

The Court: I will overrule the objection.

Colonel Harris: Will you please note an exception.

The Witness: May I state how the 90-cent rate  
page 229 } came into being?

The Court: No. Just answer the question.

By Mr. Robertson:

Q. Was that rate of 90 cents an hour satisfactory to your common laborers, so far as you know?

A. We never had any complaint.

Q. Did you ever hear any complaint about it until you heard Mr. Mullen's opening statement here yesterday?

A. No.

Q. What rate were you paying your carpenters?

A. \$1.75 an hour.

Q. Was that satisfactory to the A. F. of L. people?

A. That was the rate which was agreed on between our company and the Paintsville Local 646.

*Alexander Hamilton Bryan.*

Q. Was that rate satisfactory to your carpenters, in so far as you know?

A. We never had any complaints.

Q. What was the rate for your common laborers for overtime?

A. They were paid time and a half.

Q. Was everybody on the job, rated as carpenters or laborers, paid time and a half for overtime?

A. Carpenters were paid time and a half for overtime during the week, and I believe for work performed on Saturday. Work on Sunday, I think they got overtime.  
page 230 } I would have to check that—I mean, they got double time. I am not positive.

Q. In your position as the President of Laburnum Construction Company, was it ever reported to you at all that any of your laborers wanted the United Construction Workers to represent them?

A. I never heard the United Construction Workers mentioned in connection with the job at Kentucky until July 14.

Q. As President of the Laburnum Company, did it ever come to your attention during the progress of the work that your laborers were contemplating a strike against Laburnum Company?

A. We never had any complaints from the laborers whatsoever.

Q. When was the first time any such intimation as that came to your attention?

A. It never did come to my attention.

Q. You heard Mr. Mullens' opening statement yesterday, did you not?

A. We never had a strike.

Q. I mean, did you ever hear anything about a strike until you heard his opening statement yesterday?

A. That is the first time I heard it. I wasn't thinking about that.

Q. As you became more intimately acquainted  
page 231 } with Breathitt County, Kentucky, did you learn whether or not it was commonly spoken of in Eastern Kentucky as "Bloody Breathitt"?

A. The first time I went to the job site, I heard it referred to as "Bloody Breathitt," and heard it referred to as "Bloody Breathitt" repeatedly afterwards.

Q. Do you know how it got that name?

A. Its reputation for violence and killings.

Q. There is going to be some reference here later to Beaver

*Alexander Hamilton Bryan.*

Creek. Do you know what the reputation of Beaver Creek is for being law abiding and peaceful or otherwise?

A. Beaver Creek has a reputation for being a very rough section on Beaver Creek in Floyd County, Kentucky. It has a very bad reputation for violence in connection with labor disturbances, shootings and killings.

Q. How far is Beaver Creek from the job site, approximately, if you know?

A. I would say about 25 miles over the mountains.

Q. Is Wheelwright, Kentucky, located on Beaver Creek?

A. Yes.

Q. About how far is Wheelwright from the job site?

A. By road it is a pretty good ways. You go to Salyersville and then to Paintsville, and then to Prestonsburg. Prestonsburg is about 15 miles from Paintsville. Then you would go about 10 or 15 miles from Prestonsburg down to Beaver Creek.

Actually, by skyline it is much closer to Breathitt page 232 } County than is indicated by the road.

Q. About how big a town is Wheelwright, if you know?

A. That is where the Inland Steel Company has a big tippie. It is a small town, a coal town.

Q. Do you know a man named William O. Hart?

A. Yes, sir.

Q. Who is he? What is he?

A. William O. Hart is a field representative of the United Construction Workers and District 50 of the United Mine Workers of America.

Q. What was your first contact with him?

A. On July 14, 1949, at about 11 or 11:30 a. m., we received a telephone call in Richmond from Pikesville, Kentucky. Mr. Hart was on the telephone, and I talked to him.

Q. Did he tell you who he was?

A. Yes, sir. He said that he was a field representative of the United Construction Workers and District 50 of the United Mine Workers of America, and that he worked under Mr. David Hunter, who was Regional Director of Region 58 of the United Construction Workers and District 50, with headquarters in Pikesville.

Q. Did he tell you whether or not his own, Hart's territory and Hunter's territory, included Breathitt County, Kentucky?

A. He didn't say that at that time, but he did page 233 } say that he was calling us about the work which we were performing for Pond Creek Pocahontas Company in Breathitt County.

*Alexander Hamilton Bryan.*

Q. Did he tell you what the purpose of his telephone call was?

A. Yes. As I said, he said he was calling about the work which we were performing for Pond Creek Pocahontas Company in Breathitt County, and that he understood that Pond Creek Pocahontas Company had awarded to us a lot of additional work, including about 500 dwellings, some stores, and other buildings. Mr. Hart said that we were working in United Mine Workers territory, and that he was going to take over our work.

Q. What did you tell him?

A. I told Mr. Hart that he was correct; that Pond Creek Pocahontas Company had awarded to us a lot of additional work in Breathitt County.

Mr. Hart said that he had just closed down, or rather, United Construction Workers had just closed down a job which the Beckett Construction Company and the Link-Belt Company were performing for Inland Steel Company at Wheelwright, and that unless we recognized United Construction Workers, they would do the same thing to us on our work in Breathitt. Mr. Hart said that he thought we might like to discuss the matter with him and negotiate an agreement with United Construction Workers.

I told Mr. Hart that we had an agreement with various A. F. of L. local unions and the Richmond Building Trades Council, and that I didn't see how we could make an agreement with United Construction Workers.

Mr. Hart then said that he was intending to organize all of our workers, including the carpenters, electricians, pipefitters, iron workers, millrights, laborers, and everybody else.

He said that if we didn't make an agreement recognizing the United Construction Workers, he would close down our job.

Q. Did he tell you that before you told him about your contract with the A. F. of L., or after that?

A. He told me that afterwards.

I told Mr. Hart that I didn't see how we could make an agreement with his organization; and he said that he intended to organize all of our workers; that he was thinking mainly about the additional work which was going to be performed in Breathitt County.

I told Mr. Hart that I just didn't know what we could do, but that I would think about it. I asked Mr. Hart please to let me hear from him again before he did anything. Mr. Hart said that he would do it.

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Q. In that conversation, did he say anything to page 235 } you about anything of your laborers being dissatisfied with their wages or working conditions?

A. No. He simply said that we were working in United Mine Workers territory, and that we had to recognize his organization. If we didn't do it, he would close the job down.

Q. Did he say anything to you about a strike by your laborers?

A. No, sir.

Q. Did he make any distinction between United Construction Workers and United Mine Workers? Whose territory did he say you were in?

A. He said we were working in United Mine Workers territory. At that time I wasn't very familiar with the set-up except that I had, of course, heard of the United Mine Workers.

Q. At the time of that telephone conversation on July 14, who was your superintendent on the job site in Breathitt County?

A. Mr. C. M. Delinger.

Q. Who was your field clerk out there?

A. Mr. Maynard C. Ragan.

Q. After Hart telephoned you as you say he did, what did you immediately do that same day?

A. I immediately telephoned Mr. Delinger, and page 236 } I asked Mr. Delinger if he knew anything about United Construction Workers organizing our employees on the job in Breathitt County.

Q. What did he tell you?

A. Mr. Delinger said that he didn't know anything about it. I then told Mr. Delinger about the conversation which I had had with Mr. Hart.

Colonel Harris: We object to that, the conversation between him and Mr. Delinger, if the Court please.

Mr. Robertson: If Your Honor please, my suggestion is—I am quite willing to argue it here before the jury, but we are going to get into a field now whether it comes in as reports gotten by Mr. Bryan in the regular course of his employment or in the discharge of his duties as president of the corporation. We have it covered in our trial brief, and I suggest that we have it out in the absence of the jury.

The Court: The Court will now recess for a few minutes, gentlemen.

(Short recess.)

*Alexander Hamilton Bryan.*

(The following proceedings were had in chambers.)

Mr. Robertson: If Your Honor please, Mr. Bryan is on the stand now and under examination. I don't know whether we have any objection to his producing those papers or not. I haven't had time to confer with him. We have no objection to revealing any proper information pertinent to page 237 } this case, but I just ask the Court to defer your ruling on that until I can confer with Mr. Bryan after he gets off the stand this afternoon.

The Court: I thought maybe we might adjourn, say, about 4:30 and come in and take up this other matter, and we can act on this at the same time, rather than go into it at this point.

Mr. Fred G. Pollard: That will be entirely satisfactory.

Mr. Robertson: Now, if Your Honor please, who wants to open and close on this testimony that is offered now? We are offering the testimony and they are objecting to it.

The Court: You go ahead.

Mr. Robertson: If Your Honor please, the whole basis of our case is that we were run off the job out there by intimidation and threat. They have indicated in their opening statement that they are going to claim that our men were organized by Hart or were in the process of being organized by Hart as members of the United Construction Workers, during this critical time of this whole case; that they were dissatisfied with their wages; and that Hart had brought that knowledge home to Bryan; and that the real trouble here was that Laburnum wouldn't pay these men fair wages; that they resented it; struck; set up a picket line; and that other laborers were going to respect the picket line and refuse to cross page 238 } it because it was a peaceful, legal picket line, and it was a matter of honor between unions not to ignore a picket line.

That is a fair statement of what Mr. Mullen laid down in his opening statement.

That being the field within which he chooses to pitch the battle, we are entitled to take the offensive and go to it. We are entitled to show that we knew nothing about this UCW organization; that we knew nothing about any threatened strike; that we knew nothing about any dissatisfaction with wages. And we have already shown that in Bryan's version of the telephone conversation.

Now, we are entitled to show that he is the president of that corporation, charged with the responsibility of running the

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business. According to what Mr. Mullen has intimated in his opening statement and entirely also independently of that, when Hart made that telephone conversation to him, it was up to Bryan to do something, not sit there inertly and let nature take its course. It was up to him to take all action necessary to defend the legal rights and interests of Laburnum. How else could he do it but by communicating with the superintendent on the job? As the head of this company, which can act only through its agents, we are entitled to show what he said and what he did and what his agents said and did, and what action he took there on that particular day to try to safeguard this situation and find out what was what.

Following right along the same line, I think, of course, that they have the right to take the same broad scope. I think that unless they stultify themselves and go back on what they have already said, they have made it just as manifest in their opening statement as it can be made at that stage of the case, that they propose to bring in what happened and was said and done at these union meetings where they said that our laborers were being organized, and somebody took charge and called for a strike vote, and that they were doing this, that, and the other. I think they have a right to do that. I think it goes to the very heart of the whole case.

I think that whatever came to Bryan's knowledge, it was his duty to receive and get and act upon as president of this company, and it is properly admissible in evidence here; and also it is properly admissible in evidence here for him to tell this jury what he did and what instructions he gave and what he said and what actions he took for the reasons that I have already stated, and also so that this jury can determine: Were you really in a jam and were you honestly trying to work out a solution the best way you could, or was it just a sort of flim-flam proposition, and this strike proposition and chiseling your men out of wages and all, and now you are trying to magnify it into a case against these three unions?

page 240 } The Court: Wasn't there an objection to a question about a conversation Mr. Bryan had with his superintendent?

Mr. Robertson: Yes, sir.

The Court: I think that is the question, whether or not that is admissible.

Mr. Robertson: I think I covered that. I claim it is admissible. I thought that was what I was addressing myself to.



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The Court: What have you gentlemen to say?

Mr. Fred G. Pollard: It is pure and simple hearsay, Judge.

Colonel Harris: There were two things that occurred to me, Judge. One is that it is hearsay; and the other is that it is a self-serving declaration. They have practically proven that Bryan is the alter-ego of the Laburnum Construction Corporation, over our objection. Now he is making evidence. If he comes in and violates the hearsay rule and can testify as to what he said to somebody else, it seems to me that absolutely the world is their parish and there are no rules of evidence.

Mr. Allen: If Your Honor please, you have to approach the question from this standpoint: Beyond per-adventure of doubt, we have a right to show what happened following that telephone call. If the Court be of the opinion that page 241 } Mr. Bryan can't repeat verbatim conversations, undoubtedly we have a right to ask him, "Mr. Bryan, what did you do?"

"Well, I called my superintendent."

"What did you learn?"

"Well, I learned that he had received no information at that time, of any efforts on the part of Hart to close the work down."

"Well, did you give any instructions on the subject?"

"Yes. My instructions were to let me know if anything turned up."

There can't be any doubt about that. It is nothing on earth but a part of the history of the case, just exactly as we have in every personal injury case, and a doctor is permitted to take the witness stand and tell what the plaintiff said to the doctor when the plaintiff came to see the doctor to receive treatment.

The Chairman: Do you contend that Mr. page 242 } Bryan can tell what his superintendent told him?

Mr. Robertson: I think he can, yes, sir. It is in the regular course of business.

Mr. Allen: I am inclined to the view that we can get at the same result in a way that in my opinion will not be questionable, that Mr. Bryan can tell—he will have to do a little thinking instead of repeating, trying to tell verbatim conversations—he will have to do a little thinking and say what he did. He can say that he called him. He can say that he got information thus and so. He can say that he gave instructions. He can cover the field pretty much in that way just about as well as he can by repeating verbatim conversations.

The Court: I don't think he can repeat conversations.

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Mr. Robertson: I have no desire to repeat the conversations, Your Honor.

The Court: I think the objection is good. I sustain the objection. There may be some other way you can get it. I don't think Mr. Bryan can state what conversation he had with this or that man in his employ, but he can say what he did as a result of this conversation with Mr. Hart.

Mr. Robertson: That is all I want to do. If I understand Your Honor's ruling he can say that "I called my page 243 } superintendent and made inquiry as to whether any attempts to organize hour laborers in the UCW had come to his attention," and his answer is that they had not.

I had another thought there. "Then I instructed him to keep close watch on the situation and advise me if anything developed." That is all I am driving at

Mr. Pollard: Your Honor, it is a little belated, but I raise the question of the propriety of Mr. Bryan being in here in this hearing with you in as much as he is the witness on the stand.

Mr. Robertson: I think that is within the discretion of the Court, and I don't see any use—I would think that this Court, and I will ask Mr. Mullen on that—that this Court knows Mr. Bryan, and I don't see any reason to affront Mr. Bryan in that way. I don't see anything improper here. Their people are coming in here. I see Mr. Owen in here and I don't know whether he is going to be a witness or not.

Mr. Pollard: We are discussing what he has said and how he can say it. It tells the witness how to answer.

The Court: I think your objection is good when we discuss Mr. Bryan. When he is not being discussed—

Mr. Pollard: I agree with that.

The Court: It would be all right. But I think as long as we are talking about what can and can't be said page 244 } with respect to Mr. Bryan he should not be here.

Mr. Robertson: I will ask Mr. Owen to go out too. He is not a lawyer in the case. He was sworn as a witness and I will ask that he go out.

The Court: The Court rules require him whenever the time comes to discuss anything that he testifies that he leave. He may stay just as Mr. Bryan, but when the time comes for us to discuss matters—

Mr. Robertson: I don't know what he is going to testify to.

The Court: You have summoned him as a witness.

Mr. Robertson: I know what I am going to ask him.

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The Court: If you inform the Court that there is anything being discussed that might affect Mr. Owen, I will excuse him.

Mr. Robertson: I don't want to whisper to the Court and tell the Court something I won't tell them and I don't care to disclose my hand to them.

The Court: I mean in this conference here. If we discuss anything in our conference that might affect his testimony we will excuse him.

Mr. Mullen: Mr. Owen is not going to be a witness put on by us. He is a lawyer.

Mr. Robertson: You have said over and over again that he was not here as a lawyer.

page 245 } The Court: Let us go on with the other subject. We will take that up when we get to it.

Mr. Robertson: It is the end of the subject as far as I am concerned. I think I understand the Court's ruling.

The Court: Is there anything that you visualize coming up in the next two or three minutes that we can dispose of right now?

Mr. Robertson: I think this question is coming up. It is coming up, first, of course with us. That is going to be the matter of a labor union meeting at Paintsville on the night of July 26 and all that was said there about the danger of going back to the work. I think it is admissible as throwing light on whether or not these men were actually in fear of going back. I gather from Mr. Mullen's opening statement that he proposes exactly the same kind of testimony in his union meetings where they say our laborers were organizing and preparing to strike.

Mr. Mullen: I would like to confer with my associates on that.

The Court: All right. Will you confer now so it will save us from recessing again. I don't like to recess too often. I don't think it helps either side to do it too often.

Mr. Robertson: In reference to that conference, I say as far as I am concerned you can throw the door wide open and tell everything that happened there provided the same rule is applied to both of us.

Mr. Mullen: The point you are making is that you want to be able to tell just what occurred and was said at that meeting at Paintsville when Mr. Bryan was present urging these men to go back, and it is assumed we would want to tell what happened in these other meetings that we have referred to.

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Mr. Robertson: That is right. In all fairness to you I think it is relevant all the way around. I think it goes to the very heart of the case on both sides.

Mr. Mullen: Let me confer with my associates.

(Counsel for defendants withdrew for separate conference, after which they returned to Chambers and the following proceedings were had:)

Mr. Mullen: Judge, we don't see how we can cover that question until we come to see what the evidence is that they propose to offer. If it is a lot of conversation and so forth, we don't see how ahead of time we can accept that.

Mr. Robertson: I will ask the question and ask the Court to rule on it when we get to it.

The Court: Is that what you prefer to do?

Mr. Mullen: I don't see how we can do anything else.

page 247 } (The following proceedings were had in open court:)

By Mr. Robertson:

Q. Mr. Bryan, there is one question I failed to ask you. How was that rate of 90 cents an hour for laborers, with time and a half or overtime determined?

Colonel Harris: We object, if the Court please. It is immaterial.

The Court: I overrule the objection. I think I passed on that a while ago.

Colonel Harris: We reserve an exception.

The Witness: That was the rate which Pond Creek Pocahontas Company was paying to its laborers at the job site when we went there. We investigated what laborers, that is, common laborers in that section were getting at the time and found it to be from 60 to 75 cents an hour. 90 cents an hour was the rate approved by the Pond Creek Pocahontas Company. As a matter of fact, it had the right to approve all the wage rates which we used for all classifications of labor. Afterwards, the matter of the wage rate was discussed with the business agent of the laborers local union in Lexington, and we understood that it was satisfactory.

By Mr. Robertson:

Q. Mr. Bryan, after Hart phoned you on July 14, which

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was a Thursday, did you telephone Delinger, your superintendent on the job?

page 248 } A. Yes, sir.

Q. What instructions, if any, did you give him?

Colonel Harris: We object to that as hearsay and a self-serving declaration by the Plaintiff.

The Court: I will overrule the objection.

Colonel Harris: We reserve an exception.

By Mr. Roebtson:

Q. Don't repeat any verbatim conversation between yourself and your superintendent, but just state what instructions, if any, you gave him.

A. May I say what I called him about?

Q. Yes.

A. I called Mr. Delinger about the telephone conversation which I had just had with Mr. Hart, in which Mr. Hart said that he was going to close down our job unless we recognized United Construction Workers. I wanted to know what had been done about organizing our laborers at the job site by United Construction Workers.

Q. What did you learn?

A. I learned—

Colonel Harris: May we have the same objection and exception.

The Court: The same objection and exception will follow through to this line of question.

The Witness: No efforts had been made as far page 249 } as our supervisory officials at the job site knew, about efforts of United Construction workers to organize any of our employees.

By Mr. Robertson:

Q. Did you give any instructions as to what should be done with reference to the miners?

A. Yes. I instructed Mr. Delinger to watch the situation closely and to keep me fully informed. I also gave instructions for him to make an effort to arrange for the laborers to be taken in to the Salyersville Carpenters Local Union or Paintsville Carpenters Local Union as carpenter apprentices or carpenter helpers.

Q. And those were with what national organizations?

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A. Affiliated with the American Federation of Labor.

Q. After you had telephoned Delinger on July 14, did you communicate with the Richmond office of the A. F. of L., the Carpenters Union?

A. No. I called Mr. Jack Joinville, President of the Richmond Building Trades Council.

Q. That is what I meant. Was he the chief officer of the Richmond Building and Construction Trades Council with which you had the contract of April 15, 1947?

A. Yes, sir.

Q. What was your purpose in calling Mr. Joinville?

A. To report to him the conversation which I had just had with Mr. Hart about our job and about the United page 250 } Construction Workers.

Q. Did you request Mr. Joinville to do anything to compose the situation?

A. Yes, I asked Mr. Joinville for suggestions and I asked for their help in case trouble occurred.

Q. Did he express a willingness to be helpful if he could?

A. Yes, he did.

Q. Was he able to help and compose the situation or not?

A. It was suggested that I get in touch with Mr. Herbert Rivers, Secretary-Treasurer of the Building Trades Department of the American Federation of Labor in Washington.

Q. Did you get in touch with him that day?

A. I called Mr. Rivers that day.

Q. What was your purpose in calling him?

A. To make a report about the pending trouble with the United Construction Workers, to tell him about my conversation with Mr. Hart, to ask for their help.

Q. Were they willing to be helpful if they could?

A. Yes, I was asked to keep them informed.

Q. Were they able to compose the situation and prevent the trouble which developed thereafter?

A. No.

Q. Mr. Bryan, the next date that I am going to call to your attention is Friday of the following week, which page 251 } was July 22. What generally happened in this situation during the week between July 14 and July 22?

A. On July 18—I will have to get my calendar—July 14 was a Thursday. July 18 was the following Monday. On the night of July 18 Mr. E. I. Hathaway, who is a vice president of Laburnum, and I, left Richmond on the C. & O. night

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train for Huntington. We arrived in Huntington the next morning on July 19, got a U-Drive-It automobile and drove down to Salyersville, arriving there in the afternoon, but too late to go to the job site.

The next morning Mr. Hathaway, Mr. Delinger and I went out to the job site. We went over the entire job. Everything seemed to be going smoothly. There had been *on* interference from the United Construction Workers. I discussed with Mr. Delinger the matter of the United Construction Workers, and after that we returned to Huntington, took the train on the night of the 20th, and got back to Richmond on the morning of the 21st.

Q. While you were at the job site did any report come to you that the laborers were dissatisfied with their rate of pay?

A. No. The report came that the laborers were going to make application or had made application to become members of the Salyersville Carpenters Local No. 697.

Q. Was there any report made to you that they  
page 252 } were going to join the United Construction Workers?

A. No, sir.

Q. Was any report made to you of any of your laborers attending any United Construction Workers meetings?

A. No, sir.

Q. Was there any report made to you of the danger of any kind of strike among your laborers or any of your other employees there?

A. It was reported to me that some United Construction Worker organizers had been to the job site to see some laborers, but that the laborers had all decided to join the Salyersville Carpenters Local 697.

Q. When you were not at the job site during that week between July 14 and July 22, did you keep in touch with the job site by telephone?

A. Oh, yes. I was in touch with the job site daily.

Q. With reference to Hart, did you receive any telephone call from your Superintendent Delinger on July 22, which was Friday?

A. I don't know whether I called him or whether he called me. We were in touch with each other almost daily. If it wasn't with Mr. Delinger, it would be with Mr. Ragan, who was there at the office most of the time. But on July 22 I did have a telephone conversation with Mr. Delinger.



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Q. In that telephone conversation did he make page 253 } any report to you as president of your company regarding Hart?

A. Mr. Delinger said that he had been informed—

Mr. Pollard: I object to that, Your Honor. It is hearsay.

Mr. Robertson: Don't repeat the direct quote.

The Court: I sustain the objection.

By Mr. Robertson:

Q. Don't go into the conversation but just state the substance of what you learned from Delinger, what report Delinger made to you.

A. That on the following Monday, which would be July 25, 1949, the United Construction Workers would come to the job site with a large group of men for the purpose of stopping the job, stopping our work and closing down the job.

Q. In that conversation did your superintendent request that you come to the job site immediately?

A. Yes, sir.

Q. Did you go that day, the 22nd?

A. It was impossible for me to return at once to Kentucky. I had other things to do, and I didn't think that anything was going to happen.

Q. Did you give any instructions to Delinger or Ragan as to what they should do regarding the situation over the week-end?

A. Yes. I gave instructions that they should page 254 } watch the situation closely and keep me informed of any developments.

Q. Did you get any further report about that situation between Friday and Monday?

A. I may have had some telephone conversations. I am not positive. I know I did have a conversation on Monday, but I am not sure about over the week-end.

Q. In that conversation on Friday the 22nd, what was reported to you about what time Hart was expected the following Monday?

No, I don't think there was any time. It was just that they were coming to the job with a large group of men to stop the work and close down the job.

Q. On Monday, July 25, did you have a further telephone conversation with your superintendent, Mr. Delinger?

A. Yes, we had a telephone conversation. I wanted to know

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if the United Construction Workers crew had come to the job and had closed it down, what had happened.

Q. What information did you get along that line?

A. That nobody had come to the job.

Q. Do you know about what time that conversation occurred?

A. I think it was in the morning.

Q. Then did you have any further telephone conversation with Delinger later that day?

A. Mr. Delinger called me at my home at about page 255 } 7:30 p. m. that night while I was at the supper table.

Q. What did he report to you in that conversation?

A. That the next day, July 26, at noon, the United Construction Workers were coming to the job with a large group of men, that they would be armed, and that they were coming to stop our employees from working and to close down the job.

Q. Did he make any request that you come to the job site?

A. He begged me to come that time.

Q. Did you go?

A. I told Mr. Delinger that I would do my best to get there.

Q. Then what did you do toward getting there?

A. It was too late to take a train which would get me to Huntington in time to get to the job by noon. I made inquiry to find out if I could get a plane that would fly me out in that section. I couldn't make arrangements that night. There were no commercial lines that I could use, and I couldn't charter a special plane. My automobile was out of commission. It wasn't running well. I went to see one of our superintendents named Tony Meli and asked if he would go with me, that we would go in a company truck, that we would drive all night and see if we couldn't get there by noon.

Q. Did you go by truck?

page 256 } A. We left Richmond a little bit after ten and took turns driving and got to Huntington the next morning at about seven o'clock.

Q. When you got to Huntington did you make any attempt while you were in Huntington to communicate with Hart?

A. We stopped at a gas station to fill up with gas, and while there at the gas station I placed a telephone call to Mr. Hart over a pay station. I was in Huntington and I placed the call for Mr. Hart in Pikesville. I was told that Mr. Hart was out, but that I could talk to Mr. David Hunter, Regional Director.

Q. Did you talk to Mr. Hunter?

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A. Yes, I talked to Mr. Hunter.

Q. Now tell what you said to Mr. Hunter and what Mr. Hunter said to you.

A. I told Mr. Hunter who I was, and I told him that I had been informed that Mr. Hart planned to lead a large group of men to our job in Breathitt County for the purpose of stopping our work and closing down the job. I told Mr. Hunter that I was trying to get to the job site because of the situation just as fast as I could and that I would appreciate it if he could get a message to Mr. Hart not to interfere with our men until I had an opportunity to talk to him at the job site.

page 257 } Q. Did you tell Mr. Hunter of the conversation you had with Hart on July 14?

A. I think that I did.

Q. What did Mr. Hunter say in response to your conversation with him and request to him? What did he say to you?

A. Mr. Hunter said that he would try to get a message to Mr. Hart.

Q. Then did you start on out toward the job site?

A. Yes, sir. We started toward the job site a little bit after that.

Q. What happened?

A. We got about 10 or 12 miles from Huntington and the truck just stopped running. We had plenty of gasoline. We didn't know what the trouble was. We finally got a mechanic, who said that something had happened to the distributor and that he could fix it very easily but that it would be necessary to go to Huntington to get a new distributor. So he started back to Huntington and we expected him back in anywhere from a half hour or so, 45 minutes. The mechanic just never did come back. We were expecting him any minute. We couldn't leave the truck. We didn't know what to do. Finally we just gave up on the man and telephoned to Huntington and made arrangements for somebody to come out and pull the truck back to Huntington to have it repaired. We also made arrangements to get a U-Drive-It car

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so we could continue on to the job site.

Q. What time did you actually get to the job site?

A. We finally got a U-Drive-It car a little bit after noon, between 12 and 12:30. I called the job and informed them that we were having car trouble and we would get there as

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soon as we could. We finally got to the job between about 2:30 and 3 o'clock.

Q. After you got to the fork of the road, one fork going to Paintsville and the other fork going to Salyersville, after you went to Salyersville and went through Royalton and got out toward the job site, did you meet any considerable group of automobiles coming back in the opposite direction toward Salyersville?

Mr. Fred G. Pollard: Objection. It is immaterial, Your Honor.

Mr. Robertson: We are just going to show that part of Hart's crowd was leaving the job site. We are going to connect it up.

The Court: The objection is overruled.

The Witness: After we left Royalton headed toward the job site we passed from 15 to 18 automobiles, jeeps and trucks, all filled with men and all headed in the opposite direction from the way we were going.

By Mr. Robertson:

Q. How many men would you estimate were in that group?

A. From four to five in a vehicle. There must  
page 259 } have been—if there were 15, and multiply it by 5,  
it would be about 75.

Q. Did you ascertain afterwards who those men were?

A. They were the United Construction Workers crowd led by Mr. Hart, who had been to the job site and who were then going away again.

Q. When you got to the job site was Delinger there?

A. He was there.

Q. Was your field clerk, Maynard Ragan, there?

A. Yes.

Q. Were your carpenters and laborers there or had they left?

A. On July 26 we had men working at four locations on the job. Some were working on top of the mountain at the head of it. Most of the men were working on the tipple. About seven or eight men were working on the school house. We had one painter apprentice who was working on the 25 houses.

And the men on the head house at the top of the mountain were still working.

Q. I don't believe they were ever involved in this matter at all, were they?

A. Mr. Hart and his crowd never went there. The men on

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the school house had all stopped working. The painter apprentice was still working. He had not been—  
page 260 } nothing had been done to him. Everybody on the tipple had stopped working except maybe one or two.

Q. Did you make inquiry of Delinger and Ragan as to why the work had stopped and come to a standstill?

A. Yes.

Q. What was the report that you received?

A. I received the report that about 12 o'clock noon a group of men estimated at from 75 to 100 persons had come to the job site, headed by Mr. Hart, that they had stopped our people from working at the school house and at the tipple, and had stopped the employees of Allen Codell. As far as our own workers were concerned, they had been threatened, intimidated; that a lot of the crowd were drunk; that a lot of them were armed; that our employees were outnumbered, and that they didn't have any choice; that Mr. Hart and his crowd said that all of our people had to joint the United Construction Workers or stop work.

Q. Mr. Bryan, did Laburnum have an office there about where your bunkhouse and eating house are shown on this sketch?

A. Yes, sir.

Q. About how far would you say it was from your field office there down to the tipple?

A. I would say it is about 300 or 350 yards.

Q. How far would you say it was from the  
page 261 } school house to the tipple?

A. To go from the tipple to our little office and camp, which consisted of barracks and messhalls and bath houses, would be about 350 yards, and then you would go up the road about a mile to Evanston where the 25 houses were located and the Pond Creek Camp, and then you would continue further up the road about a quarter to a half mile to the school house.

Q. When you reached the job site there around 2:30 on the afternoon of Tuesday, July 26, did you go to the school house?

A. The first place I went was to the office to see Mr. Delinger. I don't think that we went to the school house that afternoon. We may have later on.

Q. Did you go down to the tipple while you were there or just to the office, if you recall?

A. I am not positive that we went to the tipple. I think that we did. I think that I just talked mostly to Mr. Delinger

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and Mr. Ragan at the office to get the details on what had happened, but we may have gone down there.

Q. After you had talked to Delinger and Ragan there at the office what did you do?

A. We talked at the office for some time.

The Court: What did you do after you talked to him? That is the question.

The Witness: Mr. Delinger and Mr. Meli and  
page 262 } and I got in a truck and drove back from our of-  
fice toward the Pond Creek camp.

By Mr. Robertson:

Q. Is that where the 25 dwellings were?

A. That is right.

Q. On your way over there did you meet Hart?

The Court: What is that question?

By Mr. Robertson:

Q. On the way over there did you meet Hart?

A. Just before you get to Pond Creek camp we crossed over the railroad tracks, and at that point there were three or four men standing on the side of the road by a parked car. They waived at us. We drove the truck in to the Pond Creek camp, which was just across the tracks, parked the car, and then I walked back to these three or four men. I asked if they knew where Mr. Hart was. One of the men said, "I am Mr. Hart." So I introduced myself and told him that I would like to talk to him some. He had with him three men, I believe, or four men. Two of them had on buttons showing that they were United Construction Workers stewards. Some of these men had obviously been drinking. They were not what you would call falling down drunk or anything like that, but they were not sober. Mr. Hart and his men rolled up the windows of this parked automobile and locked the doors, and Mr. Meli  
page 263 } and Mr. Delinger and I and Mr. Hart and these  
fellows with him walked away from the car maybe  
about 10 or 12 feet to talk.

Q. Mr. Bryan, did you say anything to Hart about your efforts to reach him that morning from Huntington?

A. Yes. I told Mr. Hart that I was very sorry that he had decided to come to the job with a large crowd of men and stop our people from working. I told him that I had tried to reach him early that morning a little bit after seven o'clock

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by telephoning him in Pikesville from Huntington, that I had been told that he was out, but that I could talk to Mr. Hunter. I told Mr. Hart about my conversation with Mr. Hunter and that I had asked Mr. Hunter please to ask Mr. Hart not to interfere with our workers until I could talk to Hart at the job site. I told Mr. Hart that Mr. Hunter had said he would try to get a message to Hart. Mr. Hart said that he had received the message, but that he had already made all his plans and arrangements and couldn't stop them.

Q. Did you say anything to him or—

page 264 } Colonel Harris: We object to the witness reading from a document. I notice he keeps looking at a document and then turning the pages.

Mr. Robertson: If Your Honor please, the witness is referring to a memorandum which was prepared at my request, for the purpose of refreshing his memory and guiding his memory in telling the sequence of these events. We had all that out this morning; that he cannot testify by reading his memorandum, but he has a perfect right to guide his memory by a memorandum and refer to his memorandum to refresh his memory, and keep the thing in sequence, and then testify from his memory as refreshed, and it is perfectly obvious that is what he is doing here. Mr. Allen covered all that this morning.

Colonel Harris: I respectfully submit that a man would not need anything to refresh his recollection on any such happening as Mr. Bryan is relating. A man would remember, if things like that had happened; he would remember it. He wouldn't need to write it out and come here and read it to the jury.

The Court: Are you referring to dates there, Mr. Bryan, or do you have it all written out?

Mr. Robertson: He has a full memorandum, if Your Honor wants to see it.

Colonel Harris: He has it all written out.

page 265 } Mr. Robertson: He is not testifying from the memorandum.

Excuse me. I didn't mean to interrupt you. Are you through?

Colonel Harris: Go right ahead.

Mr. Robertson: If Your Honor please, my friend is just simply not right, and I speak from bitter experience when I say that it is humanly impossible to keep the sequence of these dates and hours and different people that you meet,



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when and where, and on the particular dates, without some-  
thing to guide your memory, just like—I hadn't finished—  
just like I guided my opening statement by notes I had here.  
I challenge anybody in this court room, Mr. Bryan or any-  
body else—you cannot keep the sequence of these dates and  
hours in mind without something to guide your memory. That  
is why the law permits you to do precisely what Mr. Bryan  
is doing.

It seems to me, Your Honor, that the real purpose of my  
friend here is to break in on this story and destroy the ef-  
fectiveness of the testimony.

Colonel Harris: My purpose is to protect the rights of  
the defendants that I represent, and there are rules of law  
governing the trial of lawsuits that the experience of the

Anglo-Saxon world has developed in hundreds  
page 266 } and hundreds of years. This witness sitting up  
here and telling this account to the jury, doesn't  
have dates written down alone there. He has a narrative  
account that he keeps looking at, and on the pages are words  
underscored in red pencil so his eye can catch them.

I ask the Court to look at the page he has open right there  
now. He is not referring to dates.

Mr. Robertson: The Court is perfectly welcome to do it.

The Court: May I see it?

Mr. Robertson: I challenge everything he said. We are  
strictly within our rights in doing what the law says we ought  
to do.

(Court examining document.)

Mr. Robertson: We would be glad to give Your Honor a  
copy of the thing here, if you want it. I have one here to guide  
my memory.

Mr. Fred G. Pollard: Your Honor, I think the defendants  
are entitled to a copy of that, and for the purpose of the  
record, we would like it to be copied in the record.

Mr. Robertson: You can't have it except under a court  
ruling.

The Court: Mr. Pollard has the floor, Mr. Robertson.

Go ahead, Mr. Pollard.

Mr. Fred G. Pollard: I would like for you to  
page 267 } rule that we are entitled to examine it and have it  
copied in the record.

Mr. Robertson: We would be very glad to do that at the  
conclusion of this witness' testimony, if you want it, Your

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Honor, and they are welcome to it for all purposes of cross-examination if they want it. But I call to Your Honor's memory that under *Robinson v. Commonwealth*, they have no right to call for it at this stage.

Mr. Mullen: If Your Honor please, I have the law right here, decided in *Fant v. Miller*, 17 Gratt., which is still the law.

The Court: I guess we had better not discuss this in the presence of the jury.

Gentlemen, we will recess for a few minutes and go in chambers.

(Short recess.)

page 268 } (The following proceedings were had in chambers:)

The Court: I would like at least some authority for your position, Mr. Robertson. It does appear that his testimony is written down in narrative form.

Mr. Robertson: If Your Honor please, I could bring you the authorities. We have them here. I will let my associates take that up, but just let me before that say this:

I happen to know how Mr. Bryan handled this situation, that while these events were transpiring he made very full notes on them at the time. You might call them notes in the field. He wouldn't make them out there while he was talking to Hart, but when he would get back to the hotel that night he would write them down. He made up a memorandum. He has that now to guide his memory. When he came to write those things up in permanent form they came to this (indicating), at my suggestion and at my initiative.

What we are doing here now, Your Honor, is not reading any statement into the record. If you have watched Bryan, he hasn't been reading this thing and testifying from that. You have seen the way he has referred to it to check his memory. I have mine underscored, too—

Mr. Fred G. Pollard: To lead him on.

Mr. Robertson: Don't interrupt me, please.

Mr. Fred G. Pollard: Excuse me.

Mr. Robertson: Not to mis-question him on page 269 } something. He has a perfect right to do it, and there is no sanctity in whether it is written out in a full sentence or whether it is a skelton outline. The question

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is whether he is referring to it as a guide to his memory. I won't offer the affront to Your Honor's intelligence to say that he is using it there to remind him of the vivid occurrence there, the substance of the conversations between him and Hart, but he is using it to safeguard and check his memory on the date and the hour and to give him the cue as to what transpired there at that time, which is exactly the reason the law allows him to do it. We are doing precisely what we have a right to do and what I submit is our duty to do if under oath we are going to keep this thing as accurate as we can.

I thought we had that out this morning and that it was settled under Mr. Allen's argument this morning.

Mr. Allen: May it please Your Honor, Mr. Wigmore, who we all know is the greatest authority on evidence in this country, in the Second Edition, Second Volume, begins a discussion of this subject at paragraph 758 under the title "Present Recollection Revived." After some discussion he says this, quoting from another case:

"Where the object is to revive in the mind of the witness the recollection of the facts of which he once had knowledge, it is difficult to understand why any means should be excepted to whereby that object may be obtained. Whether  
page 270 } in any particular case the witness' memory has been refreshed by the document referred to, or he speaks from what the document tells him, is a question of fact open to observation, more or less according to the circumstances. If in truth the memory has been refreshed, and he is enabled in consequence to speak to facts with which he was once familiar, but which afterwards escaped him, it cannot signify, in effect, in what manner or by what means these facts were recalled to his recollection. Common experience tells every man that a very slight circumstance, and one not in point to the existing inquiry, will sometimes revive the history of a transaction made up of many circumstances. \* \* \* Why, then, if a man may refresh his memory by such means out of court, should he be precluded from doing so when he is under examination in court?"

Then he has a title, "Writing not made by Witness himself."

"That the paper was not written by the witness himself is therefore no fault in it. The witness may or may not, in a given instance, with propriety make use of it; but the aid may equally be a legitimate one even though another person prepared the writing."

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Then quoting from another case he says:

"If upon looking at any document he can so far refresh his memory as to recollect a circumstance, it is sufficient; and it makes no difference that the memorandum is not written by himself, for it is not the memorandum that is the evidence but the recollection of the witness."

Wigmore continues:

"This concluding expression of Lord Ellenborough's concisely states the principle, and has become a classic phrase in judicial quotation. Occasionally, the paper has been required at least to have been written under the witness' direction, or to be known by him to be correct; but this is generally due to a confusion of this subject with the subject of past recollection."

He goes on here and says, "Write not Original, but a Copy." He says that doesn't make any difference.

"That the paper is a copy, not an original, is also no essential fault. The only question is whether in fact it is genuinely calculated to revive the witness' recollection; and for this purpose a copy may conceivably be entirely satisfactory. The radical difference of principle between this use and that of a copied record of past recollection is plain; there is here no necessity of accounting for the original in any way."

Then he cites another case here:

"(the witness refreshed his memory as to the contents of a return by looking at the copy of it in the declaration): 'It was competent for him to use the declaration or any other paper for the purpose of refreshing his memory upon the subject.'"

Quoting from another authority, he said:

"(the witness used a newspaper report): 'It is well settled that he is permitted to assist his memory by the use of any written instrument; and it is not necessary that such writing should have been made by himself, or that it should be an original writing, providing after inspecting it he can speak the competency of the testimony.'"

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Then citing another case:

"(the witness, testifying to the amount of damage, used a copy made recently by K. from a copy of original contemporary memoranda; the other papers having become defaced): 'This kind of evidence is open to more or less suspicion, because \* \* \* it may lead him to suppose he recalls facts when he really does not. But this affects the credibility rather than the competency of the testimony.'"

Wigmore continues:

"That the paper was not drawn up about the time of the events is not a fault. The recollection may be equally refreshed by a recent note as by some contemporaneous record. It might, in fact, be argued that there was less danger of reliance upon the record itself and more probability of actual refreshment where the paper was one confessedly having no value as a contemporaneous record of past recollection."

page 273 } The newest work of Wigmore out is a small  
book which contains his Code of Evidence. That  
was out in 1942. There he has the rule succinctly stated.

(Off the record.)

Mr. Allen: I think that is sufficient to show the rule. As I stated this morning, the case cited by Mr. Mullen deals with just reading the memorandum to the jury. A witness can hold the memorandum in his hand, he can look at it, refresh himself, and raise his head and testify. That is what the witness is doing. The witness is not reading the memorandum. As a matter of fact, the witness did make a contemporaneous memorandum of all these things. Every trip that he made out there he made it as he went along.

The Court: Anything else?

Mr. Moore: No, I have nothing.

The Court: Mr. Mullen?

Mr. Mullen: If Your Honor please, I have been watching the witness for some time, and it is very evident that he has a running written story and uses it. The matter is settled by the Supreme Court of Appeals of Virginia in 17 Gratt., page 196,

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in the case of *Fank v. Miller*, and it has not been overruled or changed. The headnote says: "A witness ought not to write his deposition or his answers beforehand, nor ought they to be written for him beforehand by counsel or any other person, but he ought to answer the questions orally and page 274 } from memory as they are propounded to him." The full statement of the Court on that is:

"A witness may be permitted to use such short notes as he brings with him to refresh his memory, but not the substance of his deposition; nor may he transcribe such notes verbatim. Thus the law is laid down in 2 Dan. Ch. Pr. 1062. A witness ought not to write his deposition or his answers beforehand, nor ought they to be written for him beforehand by counsel or any other person, but he ought to answer the questions orally and from memory as they are propounded to him. Parties or their counsel may, orally or by writing, previous to the examination, direct his attention to the facts in regard to which he is intended to be examined, and he may refresh his memory in regard to such facts by examining books and papers, and make memoranda from them and otherwise, especially of dates and amounts, and use such memoranda, for the purpose only of refreshing his memory, at the time of giving his evidence. The memoranda themselves are not evidence, and, *a fortiori*, what he says of their contents is not, unless he remembers the facts after his memory is refreshed."

Mr. Robertson: That is exactly what we are doing here. There is no quarrel between us and that case. He is guiding his memory about these dates and hours and is testifying from his memory as refreshed. I think I have page 275 } tried enough cases, Your Honor, to know that that is permissible and is done all the time.

The Court: Is the following verbatim that statement?

Mr. Robertson: No, he is not following it verbatim.

Mr. Mullen: As he goes on he turns over the page and it shows he is following it very closely.

The Court: I think it is all right and proper if he is just glancing at it and refreshing his memory; but if he is reading it as a deposition—

Mr. Robertson: Mr. Harris is looking over his shoulder, and he doesn't like what he is saying. Your Honor, watch him.

Mr. Allen: Your Honor can have a copy of it and can tell whether he is testifying.

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Colonel Harris: For the last fifteen or twenty minutes Mr. Robertson has been using the memorandum to lead the witness, and the witness has the narrative account to respond to the lead. Mr. Robertson has been looking at a narrative form. He says he can't remember it, and he says that he wouldn't stultify himself by telling Your Honor that Mr. Bryan has to refresh his recollection on these vivid acts, but he has been turning page after page. When he started off on page 2 and I got where I could sort of look to see what the document was, he turned it up like that (indicating) so it would be impossible for me to see what he was page 276 } reading from. It was never contemplated so far as I know, and in nearly four decades of court room work I have never seen a witness allowed to bring in something that he and somebody else have concocted and get up on the stand and, using language that is probably more graphic than his own, read a narrative account. It is the contemplation of the law, as I understand it, that the jury must pass on the credibility of the witness, that they are entitled to form an opinion of him from his method and manner of testifying, and that he is supposed to hear questions and give answers from his brain. All he can do with reference to documents is to refresh his recollection. What is happening is that the substance of that thing, in my judgment—although that is a guess because they wouldn't let me see it, but watching what he is doing, he is giving Your Honor and that jury not what he remembers but what is written down there for him.

Mr. Robertson: If Your Honor please, that is simply not the fact.

The Court: Go ahead, Mr. Mullen.

Mr. Mullen: Mr. Robertson is holding one copy and asking questions from it, and he is following it in his copy and answering.

Mr. Robertson: I do it in every case I try.

Mr. Fred G. Pollard: Mr. Robertson, we were supposed to finish before you butted in.

page 277 } The Court: Go ahead, Mr. Pollard.

Mr. Mullen: I have finished. I rely on this case which I have quoted. I think it is clear and simple.

The Court: Does that case hold that you can't refresh your memory?

Mr. Mullen: It says:



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"A witness ought not to write his deposition or his answers beforehand, nor ought they to be written for him beforehand by counsel or any other person, but he ought to answer the questions orally and from memory as they are propounded to him. Parties or their counsel may, orally or by writing, previous to the examination, direct his attention to the facts in regard to which he is intended to be examined, and he may refresh his memory in regard to such facts by examining books and paper, and make memoranda—"

That is beforehand.

"—from them and otherwise, especially of dates and amounts, and use such memoranda, for the purpose only of refreshing his memory, at the time of giving his evidence. The memoranda themselves are not evidence, and, *a fortiori*, what he says of their contents is not, unless he remembers the facts after his memory is refreshed."

Mr. Robertson: If you will just let me know when they are through, I will go ahead.

The Court: We will let you know.

page 278 } Mr. Fred G. Pollard: We would like an opportunity to examine that memo.

Mr. Robertson: You won't have it.

Mr. Fred G. Pollard: We ask that Your Honor rule on that.

Mr. Allen, the judge has asked you all to wait until we are through.

Mr. Allen: I am in favor of what you said, if you will listen. I think you have a right to see it if you want to see it, under Mr. Wigmore's rules.

Mr. Fred G. Pollard: You and Mr. Robertson had better get together on it, then.

Mr. Allen: Let me read the rule. It will take but a minute. You are entitled to what Mr. Wigmore says you are entitled to. These rules in the new book are in condensed form.

"For the purpose of refreshing and improving a dormant recollection, a witness may use any artificial aid which under the circumstances is appropriate and does not seem improperly suggestive. In particular any writing may be used subject to the following provisions:

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"The writing is not required to be one made by the witness himself.

"The writing is not required to be an original.

"The writing is not required to have been made freshly after the time of the event.

page 279 } "The writing must be shown to the opponent on request.

"The writing is not a part of the testimony.

"The writing does not become a part of the witness' testimony, and therefore the party offering the witness is not entitled to read or show it as evidence to the jury, but he is compellable to show it to the jury on the request of them or the opponent pursuant to" another rule which he cites.

If you demand to see it, then you have a right to see it.

Mr. Robertson: If they are through, let me say one thing to show that they don't know what they are talking about. I am perfectly willing for them to look at it. We have no secrets in here. But I am not going to give it to them. To show you that they don't know what they are talking about, when Bryan was out in the field and got these reports there that afternoon, we have here six pages of what was reported to him that had happened, reported by these men, which he wrote out in detail. I turned all of those over and didn't ask him anything about it at all. The reason I didn't do it is that I knew I would precipitate a fight as to whether it was hearsay or not, and I am going to have those men here, either in person or by deposition, to prove it. So, I am not even following the thing slavishly myself.

If they want to take it and read it and give it back to—

The Court: Under the rule laid down by Wig-  
page 280 } more it looks as if they are entitled to see it.

Mr. Robertson: They can see it and then give it back to me.

Mr. Fred G. Pollard: We would like the copy that Mr. Bryan is using.

Mr. Mullen: Wigmore has some very strange theories that our courts do not follow.

Mr. Allen: These are rules, though.

The Court: I understand he is not to read from that paper. He can refer to it as he testifies.

Mr. Robertson: That is right.

The Court: The Court rules that he can't read that paper.

Colonel Harris: Judge, we want that paper to take home

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with us, and we want to go through it and take the transcript of his testimony and see if it is word for word and in how many places it is word for word with that memorandum, with **that narrative form** of his testimony. The whole purpose of testimony and of cross-examination would be destroyed if every witness who came in could reach in his inside pocket and pull out a narrative and start reading it.

Mr. Robertson: Your Honor, let me tell you this. They are at perfect liberty to look at Mr. Bryan's copy or any other copy of it now. They are not at liberty to take it page 281 } away from here. When we finish examining this witness and before they cross-examine him, we are perfectly willing to give them a copy of this thing. They can make any use of it they want and put it in evidence if they want to.

The Court: They are entitled to see it now.

Mr. Robertson: We offer it to them now, but we are not going to say they can take it home. They can see it now. I don't understand those rules to say you can take it *hom* and take it out of the possession of the party.

The Court: Does it say there to furnish them a copy, Mr. Allen?

Mr. Allen: It says, "The writing must be shown to the opponent on request, as provided on Rule 93(a), Article 5." Let's see what that is.

Mr. Robertson: Of course, this is a contemporaneous note.

Mr. Allen: It says in Article 5: "An expert who has made a report based on written information furnished by the co-operation of several persons and used for a common purpose, such as a \* \* \* hospital attendant, may testify by introduction of the report, subject to the right of either party to cross-examine the persons who have furnished any of the information."

Nobody furnished this information to Mr. Bryan. He got it himself. It is his own.

page 282 } The Court: As I understand it, Mr. Bryan prepared this statement himself.

Mr. Robertson: That is correct.

Mr. Lowden: At the time. This was not prepared recently. It was prepared within a week's time of the happening.

The Court: I understood that he made notes.

Mr. Robertson: That is right.

Mr. Fred G. Pollard: Judge, these are not the notes.

The Court: But this is made from the notes taken at the time, as I understand it.

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Mr. Robertson: That is right.

Mr. Lowden: When he got back to his office.

Colonel Harris: We are entitled, when the time comes, to develop who wrote them, who went over them and criticized them and deleted and blue-pencilled, and all that. We can't do it just by glancing at it and then handing it back and saying, "Thank you."

Mr. Robertson: If Your Honor please, if they want to see it, they are welcome to see it now. When we have finished with Mr. Bryan we will very gladly give them a copy of it to make whatever use they think proper on cross-examination.

Colonel Harris: We don't want it merely for cross-examination, if the Court please.

Mr. Allen: Wigmore notes that all the courts page 283 } don't agree that they have a right to see it, but most of them do.

The Court: I think so.

Mr. Robertson: We don't object to their seeing it.

Mr. Robert N. Pollard, Jr.: In all the testimony that he has given so far, when he has used this memorandum there has been no distinction between what he remembers and what has jogged his memory by the memorandum. So, the jury can't test his credibility. They don't know what he testifies from memory and what the memorandum has refreshed.

The Court: You can cross-examine him as to that and bring that fact out.

Mr. Fred G. Pollard: Couldn't he lay the memorandum aside and call for it when he needs it?

The Court: I think I have ruled that he can't read that memorandum.

Mr. Robertson: He is not reading it.

The Court: If he wants to refer to it, to a sheet, to a word here and there, a date that reminds him of certain events, I see no objection to that.

Colonel Harris: Will Your Honor inform Mr. Bryan of your ruling when you get back on the bench?

Mr. Robertson: I would be very glad to do it in the presence of the jury and to caution Mr. Bryan and tell the jury about it.

page 284 } The Court: All right. I will do it.

(The following proceedings were had in open court:)

The Court: Mr. Bryan, in regard to the paper you have in your hand, the Court rules that you cannot read from that

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paper. You may refer to it to refresh your memory and then answer the question, but do not read what is written on the paper.

The Witness: All right.

By Mr. Robertson:

Q. Before I come back to the conversation you were having with Mr. Hart, may I ask whether during these occurrences you made notes? I don't mean right while you were talking with Mr. Hart, but contemporaneously with the occurrence did you make notes from which that memorandum was subsequently prepared?

A. Each night I spent most of my time writing up what had happened that day.

Q. The ruling of the Court, as I understand, is that you may refer to the memorandum to refresh your memory as to dates and hours and personages and occurrences, and then not to read the memorandum but to testify from your memory as refreshed.

We had reached the point where Hart and his associates, two of whom were partially drunk, had locked the car and had come over, and you and Hart were engaged  
page 285 } in a conversation. I think you had told him of your effort to reach him that morning, and he told you that before he got your message all his arrangements were made and it was too late to stop.

In that conversation did you remind Hart of your conversation on July 14 about your hearing further from him before he did anything? Did you say anything to him about that?

A. He started off and said something to me. He said that he had called our office in Richmond about two weeks before and had said that if we didn't recognize United Construction Workers he was going to close down our job. Mr. Hart said that he hadn't heard any more from us, and so he decided to close the job down. He said that we were not the only people whose job had been closed down, and we didn't have any reason to complain.

Q. Did he name any other job that he had closed down?

A. Not at that time. He did in a conversation on July 14. He mentioned the job of the Link-Belt Company and Beckett Construction Company at Wheelwright.

Q. While you were talking to him on the 26th down at the railroad crossing did he say anything to you about your bucking the United Mine Workers?

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Colonel Harris: Judge, I believe that is leading, if the Court please. I think we are entitled to have him page 286 } ask what happened.

The Court: I think that question is leading. I sustain the objection.

By Mr. Robertson:

Q. Go ahead. You have a right to refresh your memory from the memorandum, and then testify from your memory as refreshed. Take it up there and tell what happened, what was said by you and Hart to each other throughout that conversation at the railroad crossing.

A. I told Mr. Hart that I had understood in my conversation on the telephone with him on July 14 that he would get in touch with me again before he did anything. Mr. Hart said that he didn't understand it that way. I then asked Mr. Hart why he had brought a large group of men to our job for the purpose of closing it down. Mr. Hart said that we were working in United Mine Worker territory and that we could not continue to work unless we recognized United Construction Workers. I told Mr. Hart that almost all of our employees were members of A. F. of L. unions, were members of local unions affiliated with the A. F. of L., or had made application to become members of those local unions, and that I didn't see how we could make an agreement with the United Construction Workers without breaking our agreements with the A. F. of L. unions.

I told Mr. Hart that we were already using page 287 } union labor and that I didn't see why he didn't direct his efforts to trying to organize the workers of people who were not using union labor.

Mr. Hart's response to that was that our laborers were not organized. I told Mr. Hart that all of our laborers had made application to become members of the Salyersville union as carpenter helpers. Mr. Hart told me, he said that made no difference to him, that we were working in United Mine Worker territory and he was going to take over, and that we could not continue to work unless we recognized his organization. He said it would be necessary for us to recognize United Construction Workers and to pay laborers at the rate of \$1.36 an hour and to pay carpenters at the rate of \$1.86 an hour.

page 288 } I asked Mr. Hart why it was that he had brought a group of men to the job and had threatened and intimidated our workers. Mr. Hart said to that, he said

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"You already seem to know so much, I don't see why I should answer your questions." He then went on and said, "I bet you \$500 right now that you will never finish your job unless you use United Construction Workers men."

I told Mr. Hart that I was going to finish the job and I wasn't going to use United Construction Workers men.

He said to that, he says, "Nobody has ever been able to buck the United Mine Workers yet, and you can't do it, either."

I told Mr. Hart that I didn't know about the other people, but that I was going to hold him and the United Mine Workers responsible for what they had done to us, and I didn't mean maybe. I told him that I expected to have men back on the job the next morning if I had to go to work myself. I told Mr. Hart—Mr. Hart's response to that was that he made some jeering remark about I had never done a day's lick of work in my life and then he went on to say that our men would be afraid to work and that if they did try to work he would have men there to stop them. He also said that if our men tried to work he was going to stop the coal company people from working and close down the mine operations.

I told Mr. Hart that I didn't think he could do  
page 289 } that. But he said, "Just wait and see. I have already made arrangements. I can do it."

We had it out pretty hot and heavy. I wasn't mad, as Mr. Mullen said in his statement, but I tried to be as firm as I could.

Q. After you finished your conversation with Mr. Hart what did you do?

A. We went over to the Pond Creek office and talked to Mr. Haslam, their mine superintendent.

Q. Did you inform Mr. Haslam of the remark that Hart had made about shutting down the Pond Creek Pocahontas Company mining operation?

Colonel Harris: Am I correct in assuming that our objections and exceptions cover questions of that kind?

The Court: Is there any question about that?

Mr. Robertson: No, sir.

The Court: Very well.

The Witness: I told Mr. Haslam what Mr. Hart had said.

By Mr. Robertson:

Q. You have no right to tell what Mr. Haslam said back to you, except the substance of his response.



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A. I don't see how you can tell the substance of the response without telling what he said.

Q. On cross examination they can let you say page 290 { anything you want, but I will leave it at that.

After you had talked to Mr. Haslam, did you return to Paintsville that night?

A. We intended to stay at the Carpenter Hotel in Salyersville. Tony Meli and Cecil Delinger and I went back to Salyersville and had supper. Then we went over to Paintsville to a meeting of Carpenter Local Union 646, which had been called for the special purpose of discussing and considering what had occurred at our job site that afternoon.

Mr. Robertson: If Your Honor please, we have arrived at the point where we are going into the union meeting. I think that is going to precipitate another row between Colonel Harris and me. You said you were going to adjourn at 4:30. It is 4:26 now. I don't know whether—I am perfectly ready to go ahead. I don't feel tired. It is all right me just to keep right on.

The Court: I believe that the jury would probably like to adjourn at this time, and we will adjourn until tomorrow morning, gentlemen, at ten o'clock.

(Whereupon, at 4:25 p. m. the jury was excused and the following proceedings were had in Chambers:)

Mr. Robertson: If Your Honor please, as I understand, Mr. Fred Pollard's request is that they be shown extracts from our records showing in substance that we did \$20 million worth of construction, approximately, in the page 291 { last ten years. We have here a booklet which has been prepared entitled "Laburnum Construction Corporation, Richmond, Virginia, Construction Record." It doesn't purport to cover everything. There are a number of small operations that are not included in there. I think it shows what they want. Mr. Bryan is prepared to make oath to its substantial correctness either now or tomorrow as preferred, and in the meantime there it is.

The Court: Suppose you take it.

Mr. Fred G. Pollard: We will examine it and see if that is what we want.

The Court: All right. We will just hold this in abeyance, the *subpoena duces tecum*.

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(Off the record.)

Mr. Fred G. Pollard: Your Honor, we would like to ask the Court to let us have until tomorrow morning the memorandum which Mr. Bryan is reading from.

Mr. Robertson: I don't think there is any such ruling as that.

Mr. Allen: I didn't hear you.

The Court: I don't know that I should let you have the entire memorandum at this point. It may be that the Court could order a copy of the memorandum according to the testimony so far. I am not advised on that.

Mr. Allen: You mean the memorandum he is page 292 } testifying from and refreshing his memory with?

Mr. Fred G. Pollard: After he has finished his testimony our problem is that it would take quite some time to examine it. If we could have a short adjournment for the purpose of examining it before we cross-examine Mr. Bryan it would satisfy our needs.

Mr. Robertson: We told them we would give them a copy of it. We told them we would give them a copy.

Mr. Allen: I think they have a right to it before we cross-examine, to look at it. I have insisted on that right myself in cases and the Judge has given me the right.

The Court: I will rule that you will be entitled to that memorandum before cross examination and that you have ample time to review it before cross examination.

Colonel Harris: Is that satisfactory with you?

Mr. Mullen: That is entirely satisfactory with me. I wouldn't give a cent whether I ever see it or not.

(Whereupon, at 4:50 o'clock p. m. the Court recessed until 10:00 o'clock a. m. Wednesday, January 24, 1951.)

\* \* \* \* \*

(End of Volume I.)

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